Supreme Court, U.S.
FILED
02-1346 FEB 13 2003
OFFICE OF THE CLERK

In The

Supreme Court of the United States

H. BEATTY CHADWICK,

Petitioner,

v.

BARBARA JEAN CROWTHER CHADWICK,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

H. BEATTY CHADWICK
P.O. Box 23
Thornton, PA 19373
610-595-2740, ext. 317

QUESTIONS PRESENTED

1. Whether clearly established federal law as determined by this Court renders it reasonable to conclude that the due process clause places no limitation upon the length of time a person may be incarcerated for civil contempt?

2. Whether clearly established federal law as determined by this Court renders it reasonable to conclude that procedural due process does not demand a Sixth Amendment jury trial at which the state bears an unshifting burden of proof beyond a reasonable doubt before a person may be incarcerated for five or more years for contempt, regardless of whether the contempt be labeled criminal or civil?

3. Whether a habeas corpus reviewing court should make a de novo review of the Record where it rests its decision on state court fact finding challenged under 28 U.S.C. § 2254(d)(2) and the District Court did not hold an evidentiary hearing?

4. Whether and under what circumstances the standard of review set forth in 28 U.S.C. § 2254(d)(1) applies where the state court denies relief without explanation or opinion?

5. Whether a private party has Article III standing to appeal the grant of a writ of habeas corpus where no state respondent has appealed?

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

H. Beatty Chadwick,

Appellee Below

James Janecka, Warden, Delaware County Prison*

District Attorney of the County of Delaware (Pennsylvania)*

The Attorney General of the State of Pennsylvania**

Barbara Jean Crowther Chadwick,

Appellant Below.

---

* Respondent in District Court, but did not file notice of appeal to Court of Appeals and was not a party before that Court.

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	1
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	9
1. Certiorari Should Be Granted To Settle Whether The Standard Of Review Set Forth In 28 U.S.C. § 2254(d)(1) Can Or Should Be Applied Where The State Court Decision At Issue Denies Relief Without Explanation Or Opinion	9
2. Certiorari Should Be Granted To Settle Whether And To What Extent In Identifying "Clearly Established Federal Law" For The Purpose Of 28 U.S.C. § 2254(d)(1) A Habeas Corpus Court May Look To Generalized Statements In This Court's Case Law As Well As More Specific Rules	14
3. Certiorari Should Be Granted To Settle Whether And Under What Circumstances A Habeas Corpus Court Is Required Under 28 U.S.C. § 2254(d)(1) To Reject A State Court's Unreasonable Failure To Extend A Settled Constitutional Principle To A New Setting Where It Ought To Apply	20

TABLE OF CONTENTS – Continued

Page

4. Certiorari Should Be Granted To Settle Whether A Habeas Corpus Reviewing Court Is Obliged To Perform A De Novo Review Of The Record When It Rests Its Decision On State Court Factfinding Challenged Under 28 U.S.C. § 2254(d)(2) And The District Court Did Not Hold An Evidentiary Hearing 24

5. Certiorari Should Be Granted To Settle Whether A Private Party Has Article III Standing To Appeal In A Habeas Corpus Proceeding Under 28 U.S.C. § 2254 Where No State Respondent Has Appealed 26

CONCLUSION 30

TABLE OF AUTHORITIES

Page

CASES:

Allen v. Wright, 468 U.S. 737 (1984).....28

American Airlines, Inc. v. Allied Pilots Association, 228 F.3d 574 (5th Cir. 2000).....21

Appel v. Horn, 250 F.3d 203 (3rd Cir. 2001).....12

Bell v. Jarvis, 236 F.3d (149 4th Cir. 2000).....10, 13

Chadwick v. Andrews, 522 U.S. 864 (1997)..... 6

Diamond v. Charles, 476 U.S. 54 (1986) 26, 27

DiBenedetto v. Hall, 272 F.3d 1 (1st Cir. 2001) 13

Early v. Packer, ___ U.S. ___, 123 S. Ct. 362 (2002).....12

Evans v. Williams, 206 F.3d 1292 (D.C. Cir. 2000).....21

Everett v. Beard, 290 F.3d 500 (3rd Cir. 2002) 12

Foucha v. Louisiana, 504 U.S. 71 (1992).....23

Friends of Earth v. Laidlaw Environmental Services, 528 U.S. 167 (2000) 27, 28

Gompers v. Bucks Stove & Range Co., 221 U.S. 418 (1911).....15, 18

Greene v. Lambert, 228 F.3d 1081 (9th Cir. 2002).....13

Hameen v. Delaware, 212 F.3d 226 (3rd Cir. 2000).....12

Harris v. City of Philadelphia, 47 F.3d 1311 (3rd Cir. 1995).....21

Harris v. Stovall, 212 F.3d 940 (6th Cir. 2000).....13

Hough v. Anderson, 272 F.3d 878 (7th Cir. 2001).....13

In Re Cantazaro, 663 F. Supp. 1 (D.D.C. 1985).....17

TABLE OF AUTHORITIES – Continued

Page

In Re E.I. DuPont – Benlate Litigation, 99 F.3d 363 (11th Cir. 1996).....21

In Re Epstein, 206 F. 568 (E.D. Pa. 1913) *aff'd, sub nom. Epstein v. Steinfeld*, 210 F. 236 (C.CA. 3rd 1914).....16

In Re Grand Jury Investigation, 600 F.2d 420 (3rd Cir. 1979).....17

Jackson v. Indiana, 406 U.S. 715 (1972).....22

James v. Bowersox, 187 F.3d 866 (8th Cir. 1999).....13

Kansas v. Hendricks, 521 U.S. 346 (1997).....23

Kennaugh v. Miller, 289 F.3d 36 (2nd Cir. 2002).....19, 24

Lambert v. Montana, 545 F.2d 87 (9th Cir. 1976).....17

Linda R.S. v. Richard D., 410 U.S. 614 (1973).....27, 28

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)....27, 28

Maggio v. Zeitz, 333 U.S. 56 (1948).....15, 16, 17, 18, 22

Martin-Trigona v. Shiff, 702 F.2d 380 (2nd Cir. 1983).....29

McNeil v. Director Patuxent Institution, 407 U.S. 245 (1972).....23

Muniz v. Hoffman, 422 U.S. 454 (1975).....21

Neil v. Puckett, 239 F.3d 683 (5th Cir. 2001).....13

New York State N.O.W. v. Terry, 159 F.3d 86 (2nd Cir. 1998).....21

Norde v. Keene, 294 F.3d 401 (2nd Cir. 2002).....12

O'Brien v. DuBois, 145 F.3d 16 (1st Cir. 1998).....18

Oriel v. Russell, 278 U.S. 358 (1929).....15, 16, 18

TABLE OF AUTHORITIES – Continued

Page

Ramdass v. Angelone, 530 U.S. 156 (2000) 24

Rudenko v. Costello, 286 F.3d 51 (2nd Cir. 2002) 12

Sellan v. Kuhlman, 261 F.3d 303 (2nd Cir. 2001) 12

Sigety v. Abrams, 632 F.2d 969 (2nd Cir. 1980).....16

Soobzokov v. CBS, Inc., 642 F.2d 28 (2nd Cir. 1981).....16

Taylor v. Withrow, 288 F.3d 846 (6th Cir. 2002).... 19, 24, 26

United Mine Workers v. Bagwell, 512 U.S. 821 (1994)..... 15, 18, 20, 21, 22

United States v. Lippitt, 180 F.3d 873 (7th Cir. 1999).....16

VanTran v. Lindsey, 212 F.3d 1143 (9th Cir. 2000) 18

Washington v. Schriver, 255 F.3d 45 (2nd Cir. 2001) 11

Weeks v. Angelone, 528 U.S. 225 (2000).....9, 10

Weeks v. Angelone, 176 F.3d 249 (4th Cir. 2000).....10

Williams v. Taylor, 529 U.S. 362 (2000) 11, 18, 19, 23, 24

Wright v. Department of Corrections, 278 F.3d 1245 (11th Cir. 2002).....13

Young v. U.S. ex rel. Vuitton et fils, S.A., 481 U.S. 787 (1987).....27

Zadvydas v. Davis, 533 U.S. 678 (2001).....23

CONSTITUTIONAL PROVISIONS:

United States Constitution, Amendment Fourteen 2, 6, 7

TABLE OF AUTHORITIES – Continued

Page

STATUTES:

28 U.S.C. § 2254(a) 7

28 U.S.C. § 2254(d) ..... *passim*

PETITION FOR A WRIT OF CERTIORARI

H. Beatty Chadwick, the Petitioner, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above-entitled case on August 20, 2002, a petition for rehearing having been denied on December 4, 2002.

OPINIONS BELOW

The December 4, 2002 opinion of the United States Court of Appeals for the Third Circuit, whose judgment is herein sought to be reviewed, is reported at 312 F.3d 597 and is attached as Appendix A. The prior opinion of the United States District Court for the Eastern District of Pennsylvania entered January 4, 2002 is unreported and is attached as Appendix B.

JURISDICTION

Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the following provisions of the United States Constitution:

Amendment Six:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an

impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment Fourteen, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction of the United States, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Also involved are the provisions of 28 U.S.C. § 2254(d):

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –

(1) resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the

facts in light of the evidence presented in the State court proceeding.

STATEMENT OF THE CASE

Petitioner H. Beatty Chadwick has been imprisoned since April 5, 1995 for "civil" contempt of an order that he deposit $2.5 million in an account controlled by the Delaware County (Pennsylvania) Court of Common Pleas, for eventual equitable distribution in a divorce action.

On January 3, 2002 the United States District Court for the Eastern District of Pennsylvania issued a Writ of Habeas Corpus and ordered Mr. Chadwick released from confinement. The District Court stayed its Order for 30 days to allow any party respondent to appeal. Barbara Chadwick, Mr. Chadwick's former wife and an Intervenor in the District Court, filed an appeal on January 15, 2002. No notice was filed on behalf of any of the three original respondents – the Warden, the District Attorney (who had been dismissed as a party respondent at his request on April 23, 2001) or the state Attorney General. The United States Court of Appeals for the Third Circuit granted a stay pending appeal at Mrs. Chadwick's request. On August 20, 2002 the Court of Appeals reversed the judgment of the District Court which had granted the Writ. Mr. Chadwick's request for rehearing was denied on December 4, 2002 (Chief Judge Becker would have granted rehearing). The Court of Appeals did, however, file an amended opinion, which is attached as Appendix A.

Mr. Chadwick's imprisonment arises from an order of the Court of Common Pleas of Delaware County, Pennsylvania in a divorce action commenced on November 23, 1992. On July 22, 1994, at Mrs. Chadwick's request, the

state trial court (Joseph Labrum, J.) directed Mr. Chadwick to pay $2,500,000 in cash into a bank account under the control of the state court, presumably so the money would be available for distribution in the divorce proceeding, although no distribution proceeding had been had as of that or the present date.[1] This sum was the major part of a $2,502,000 investment made by Mr. Chadwick nearly eighteen months before the state court order under the terms of a joint venture agreement between Mr. Chadwick and Maison Blanche, Limited, a Gibraltar corporation, entered into in August, 1990. Mr. Chadwick maintains that he possesses the investment interest, but was then and still is unable to reclaim the cash.

On August 29, 1994, based upon Mrs. Chadwick's petition, the trial court adjudicated Mr. Chadwick in contempt. No sanction was imposed. On October 18, 1994, the trial court, on it own motion, notified Mr. Chadwick that a hearing on a "petition for contempt" would be held on October 31, 1994. No such petition was filed however, and no additional information was given as to the purpose of the proposed hearing. On October 31, 1994, following a proceeding in court at which Mr. Chadwick was not present, the trial court again adjudicated Mr. Chadwick in contempt of its July 22, 1994 order. By order dated November 2, 1994, the court directed that Mr. Chadwick be arrested and imprisoned indefinitely, "until a further hearing is held." No condition was stated upon the performance of which Mr. Chadwick would be released. It is under this order that Mr. Chadwick remains incarcerated.

---

[1] The parties were granted a bifurcated divorce on November 14, 2001, but property distribution issues remain to be determined.

No trial was held and no trial by jury was offered. The record is devoid of evidence that Mr. Chadwick then had the cash resources, or any resources readily convertible into cash, that could satisfy the trial court's payment order. No findings of fact or conclusions of law were filed. Mr. Chadwick appealed both the order of July 22, 1994 and the order of November 2, 1994 which directed his imprisonment, but the state Superior Court, at the request of Mrs. Chadwick, quashed these appeals as the orders were deemed interlocutory.

On March 24, 1995 Mr. Chadwick filed a petition to vacate the sanction of imprisonment in the November 2, 1994 order. A hearing on this petition was held on April 20, 1995. In the meantime, on April 5, 1995, Mr. Chadwick was arrested and imprisoned. Mr. Chadwick was not permitted to be present at the April 20, 1995 hearing, and the petition to vacate was denied.

Thereafter, on June 21, 1995 Mr. Chadwick filed the first of seven habeas corpus petitions with the state trial court. Mrs. Chadwick was permitted, over objection, to participate in these proceedings. Each of these (except the last) was heard by Judge Battle rather than Judge Labrum, and each was denied. No evidence was presented as to Mr. Chadwick's financial resources or his ability to make the payment that the court demanded, apart from Mr. Chadwick's statement of inability to do so. However, in connection with appeals of certain of those rulings Judge Battle wrote opinions summarizing as "facts" the unproven allegations by Mrs. Chadwick that Mr. Chadwick continued to control the cash paid to Maison Blanche, Limited, including allegations that monies had been deposited by or for Mr. Chadwick in bank accounts in the United States, Switzerland and Panama. Not only had Judge Battle heard no evidence on any of these "facts,"

there was no substantive support for them in the evidentiary record.

When the state trial court denied habeas corpus relief on October 5, 1995, after Mr. Chadwick had been imprisoned for six months, he filed an appeal with the state Superior Court, arguing that his imprisonment was unlawful on various state law grounds and that his Fourteenth Amendment rights to due process and equal protection had been infringed. The Superior Court did not discuss the federal Constitutional grounds but affirmed the trial court's orders on August 22, 1996, applying a standard of review that accepted Judge Battle's conclusions, including the unsupported "facts" as to Mr. Chadwick's ability to comply, in the absence of proof of "bias, prejudice or ill will." Mr. Chadwick petitioned the state Supreme Court for allowance of appeal based upon errors in the burden of proof and other state law grounds and based upon the failure of the Superior Court to address the federal Constitutional issues raised there. The state Supreme Court denied discretionary review on April 8, 1997. This Court denied certiorari. *Chadwick v. Andrews*, 522 U.S. 864 (1997).

While this appeal was pending, Mr. Chadwick filed a new petition for writ of habeas corpus, his sixth, with the state trial court. No additional evidence as to Mr. Chadwick's ability to comply apart from his own disclaimer was presented. The trial court denied the petition in June, 1996. This denial was appealed to the state Superior Court which again affirmed the trial court's denial on April 23, 1997, declining to recognize a due process rule that lengthy "civil" contempt could become "criminal" in the Constitutional sense because the state Supreme Court had never ruled on the permissible length of imprisonment for a civil contempt. The Superior Court

also deferred as before to the trial court's conclusions as to ability to comply and the continuing coercive effect of the imprisonment. Mr. Chadwick did not file a petition for allowance of appeal with the state Supreme Court inasmuch as that court had denied a petition on similar grounds only fifteen days previously.

Mr. Chadwick then sought habeas corpus relief in the U.S. District Court for the Eastern District of Pennsylvania. On April 30, 1998 that court denied Mr. Chadwick's petition for lack of exhaustion of state remedies. Under the circumstances, the District Court suggested that the federal Constitutional claims again be presented to the state Supreme Court and indicated several means by which that could be accomplished, including a petition for writ of habeas corpus under the state Supreme Court's original jurisdiction provided by statute. Mr. Chadwick filed such a petition on September 27, 1999, setting forth nine violations of due process rights safeguarded by the Fourteenth Amendment. He also filed an application for permission to file the petition as required by the state Rules of Appellate Procedure. Mrs. Chadwick sought to intervene and filed a proffered Answer. On February 8, 2000 the state Supreme Court granted Mr. Chadwick's application for permission to file the petition and granted Mrs. Chadwick's motion to intervene and to file an Answer. The state Supreme Court then denied the habeas corpus petition without explanation or opinion.

Mr. Chadwick filed the Petition for Writ of Habeas Corpus at issue in this case under the provisions of 28 U.S.C. § 2254(a) on March 2, 2000, asserting the same nine federal Constitutional claims presented in the petition which had just been denied by the state Supreme Court, that he had been denied due process of law: (i) by imprisonment for noncompliance with an order with which

he was unable to comply; (ii) since he was not afforded a jury trial and other procedural rights; (iii) by the summary nature of the proceedings which adjudicated his imprisonment; (iv) by imposing imprisonment which has become punitive; (v) by imprisonment for the nonpayment of money; (vi) by indefinite imprisonment in a civil proceeding; (vii) since the order of imprisonment fails to contain a condition for his release; (viii) by imprisonment for the alleged violation of an order the Court lacked jurisdiction to issue; and (ix) because he was not afforded a prompt appeal of the state contempt and imprisonment order. The District Attorney of Delaware County filed a response which included the admission that Mr. Chadwick's incarceration "now borders on the extreme." Mrs. Chadwick was permitted to intervene and filed a motion to dismiss based upon an alleged failure to exhaust state remedies. No evidentiary hearing was held. On December 11, 2000, a Magistrate Judge issued a report and recommendation which found that exhaustion of state remedies had occurred, but recommended dismissal of the petition on the merits, and Mr. Chadwick filed exceptions.

After oral argument the District Court on January 3, 2002 sustained Mr. Chadwick's exceptions to the report of the Magistrate Judge and granted the petition for writ of habeas corpus on the ground that his imprisonment had become impermissibly punitive and thus a violation of his due process rights. Mrs. Chadwick appealed to the United States Court of Appeals for the Third Circuit; none of the Respondents did so. Thereafter, the Attorney General of Pennsylvania filed an amicus brief, although he had not participated in the proceedings before the District Court and could have, but did not, file a notice of appeal. The Court of Appeals on August 20, 2002 reversed the judgment of the District Court because, after applying the standards set forth in 28 U.S.C. § 2254(d)(1), it concluded

that this Court had never held that the due process clause limits the length of time a person may be confined for civil contempt, and therefore the refusal of the state court to release Mr. Chadwick notwithstanding his lengthy imprisonment would not be unreasonable.

REASONS FOR GRANTING THE WRIT

The judgment of the United States Court of Appeals for the Third Circuit should be reviewed by this Court because the Court of Appeals has decided certain issues in this case which implicate important questions of federal law in respect to the application and interpretation of 28 U.S.C. § 2254(d) which have not been but should be settled by this Court.

1. CERTIORARI SHOULD BE GRANTED TO SETTLE WHETHER THE STANDARD OF REVIEW SET FORTH IN 28 U.S.C. § 2254(d)(1) CAN OR SHOULD BE APPLIED WHERE THE STATE COURT DECISION AT ISSUE DENIES RELIEF WITHOUT EXPLANATION OR OPINION.

In this case the decision of the Pennsylvania Supreme Court at issue (Appendix C) denied Mr. Chadwick's claims for relief without any reasons or explanation or any indication that it had addressed the federal issues, although nine separate grounds, had been urged before that court. The Court of Appeals held (Appendix A, p.12) that the § 2254(d)(1) standard of review applied to Mr. Chadwick's habeas corpus petition.

The Court of Appeals concluded (Appendix A, pp.14-15) that its holding was required by the decision of this Court in *Weeks v. Angelone*, 528 U.S. 225 (2000). The issue

of the proper standard of review, however, was not implicated in *Weeks*. This Court's entire pertinent discussion in *Weeks*, after analyzing extensively what it considered to be the correct disposition of the petitioner's claims, was in one conclusory paragraph ending "for the reasons stated above, it follows *a fortiori* that the adjudication of the Supreme Court of Virginia affirming Petitioner's conviction and sentence neither was 'contrary to' nor involved an 'unreasonable application of' any of our decisions." *Id.* at 237. In other words, having already concluded that the state court's rejection of the petitioner's claims was *correct*, it necessarily followed that the Petitioner could not prevail. In the instant case, the Court of Appeals was persuaded (Appendix A, p.14) that the Fourth Circuit in *Weeks* had stated in *its* opinion that § 2254(d)(1) applied even though the state court had not given reasons for the decision, *Weeks v. Angelone*, 176 F.3d 249, 259 (4th Cir. 2000)[2], and that this Court had affirmed the Fourth Circuit. It reads too much into this Court's opinion in *Weeks,* however, to conclude that this Court in that decision interpreted § 2254(d)(1) as to apply to a state court decision which was only a bare dismissal, without explanation. Even the Fourth Circuit, from which *Weeks* arose, concluded in a subsequent decision that this Court had not reached in *Weeks* the issue of the application of § 2254(d)(1) to summary state court dispositions. *Bell v. Jarvis*, 236 F.3d 149, 161 n.8 (4th Cir. 2000).

---

[2] The standard of review was not at issue in the lower court either, as the parties in *Weeks* agreed that § 2254(d)(1) was applicable. *Id.* at 257. Moreover, although the state Supreme Court did not give reasons for its decision it did issue an opinion stating that it had considered all of the arguments presented and concluded that none had any merit. *Id.* at 259.

The statute itself is ambiguous and substantial arguments favor the view that § 2254(d)(1) cannot effectively be applied where the state court decision at issue denied relief, without explanation. By its terms § 2254(d)(1) applies only where the state court has "adjudicated" the federal claims "on the merits," so that, at the very least, the habeas corpus court must be able to ascertain from the state court decision that these conditions have been fulfilled. Moreover, the subsequent analysis required by the Section would be very difficult if not impossible to perform without an indication of the relevant federal precedents considered by the state court. In order for the federal habeas corpus court to determine whether a given state court decision was "contrary to" or an "unreasonable application of" federal law, it would be necessary to "guess" the federal law which formed the basis of the state court decision unless that court provided the precedents it considered. Indeed, the three opinions in *Williams v. Taylor*, 529 U.S. 362 (2000), where this Court first considered the standards to be applied by a habeas corpus court in compliance with § 2254(d)(1), each extensively analyzed the reasoning employed by the state court and did so in ways that would have been impossible if the state court had not identified the federal precedents under which it acted. *Id.* at 394, 395, 397-98 (opinion of Stevens, J.); *Id.* at 414-16 (opinion of O'Connor, J.) and *Id.* at 417-19 (opinion of Rehnquist, C.J.). See discussion in *Washington v. Schriver*, 255 F.3d 45, 53-54, 64 (2nd Cir. 2001). If *Williams v. Taylor* is to be used as a paradigm, at least some explication of the basis for the state court's decision would appear to be a condition for the application of the § 2254(d)(1) standard of review. In a recent *per curiam* decision the Court held that application of the "contrary to" clause of § 2254(d)(1) should not depend upon the citation of federal law by the state court (the state court

had in that case issued an opinion) "so long as neither the reasoning nor the result of the state court decision contradicts them," thus suggesting that some reasoning by the state court is necessary. *Early v. Packer*, ___ U.S. ___, 123 S.C. 362, 365 (2002).

The various Circuits have reflected a variety of approaches to the question. The Third Circuit had decided that the § 2254(d)(1) standard of review did not apply where the state court opinion failed to demonstrate that the federal claims had been considered. *Everett v. Beard*, 290 F.3d 500, 507-08 (3rd Cir. 2002); *Appel v. Horn*, 250 F.3d 203, 209-12 (3rd Cir. 2001); and *Hameen v. Delaware*, 212 F.3d 226, 248 (3rd Cir. 2000). The opinion in the instant case distinguished those decisions because in the instant case the state Supreme Court did not render an opinion at all. (Appendix A, p.15). This appears to be a distinction without logical support, since if a federal habeas corpus court cannot conclude that a federal issue has been addressed where the state court renders an opinion but does not mention the federal issue, it should be at least equally difficult to reach such a conclusion in the absence of any opinion whatsoever.

The Second Circuit has held that § 2254(d)(1) applies to summary state court decisions provided that the state court made an adjudication of the federal issues on the merits. *Sellan v. Kuhlman*, 261 F.3d 303, 312 (2nd Cir. 2001). Subsequent decisions by that Circuit, however, have held that § 2254(d)(1) did not apply where the habeas corpus court could not tell from the state court decision that it was on the merits. *Rudenko v. Costello*, 286 F.3d 51, 69 (2nd Cir. 2002) or if the federal issue was not mentioned by the state court. *Norde v. Keene*, 294 F.3d 401, 410 (2nd Cir. 2002).

The Fourth, Sixth and Ninth Circuits have applied § 2254(d)(1) to cases where there was a summary state court decision, but in such cases have required the habeas corpus court to make an independent review of the state court record and the applicable law. *Bell v. Jarvis*, 236 F.3d 149, 158 (4th Cir. 2000); *Harris v. Stovall*, 212 F.3d 940, 943 (6th Cir. 2000); *Greene v. Lambert*, 288 F.3d 1081, 1089 (9th Cir. 2002). The First, Fifth, Seventh and Eleventh Circuits have adopted the view that the habeas corpus court should focus on the conclusions of the state court and that while the state court's reasoning would be helpful, it was not essential to the application of § 2254(d)(1). The habeas corpus court must be convinced, however that the state court had addressed the federal issues. *DiBenedetto v. Hall*, 272 F.3d 1, 6 (1st Cir. 2001); *Neil v. Puckett*, 239 F.3d 683, 696 (5th Cir. 2001); *Hough v. Anderson*, 272 F.3d 878, 897 (7th Cir. 2001); *Wright v. Department of Corrections*, 278 F.3d 1245, 1254 (11th Cir. 2002). The Eighth Circuit has applied § 2254(d)(1) to cases where the state court made a summary disposition. *James v. Bowersox*, 187 F.3d 866, 869 (8th Cir. 1999).

This diversity of analytical approach suggests the desirability of guidance from this Court. It is particularly troubling that a habeas corpus court would be placed in the position of "guessing" the reasoning of a state court or even whether a federal issue had been addressed at all. Such a method would cause the applicability of § 2254(d)(1) and any subsequent analysis under that section if it were deemed applicable, to be subject to the caprice of an individual judge. It may be that in some cases the federal issue is readily apparent from the state court record and it would have been impossible for the state court to decide the case without having addressed it. In the instant case, however, with multiple grounds

having been presented to the state court, a state court dismissal, without more, makes it impossible to know if all of the federal issues had been addressed or adjudicated within the meaning of § 2254(d)(1).

2. CERTIORARI SHOULD BE GRANTED TO SETTLE WHETHER AND TO WHAT EXTENT IN IDENTIFYING "CLEARLY ESTABLISHED FEDERAL LAW" FOR THE PURPOSE OF 28 U.S.C. § 2254(d)(1) A HABEAS CORPUS COURT MAY LOOK TO GENERALIZED STATEMENTS IN THIS COURT'S CASE LAW AS WELL AS MORE SPECIFIC RULES.

If § 2254(d)(1) applies, a habeas corpus court must determine whether a given state court decision is "contrary to" or an "unreasonable application of" "clearly established federal law" as determined by this Court.

The Court of Appeals held that "the Supreme Court has never endorsed the proposition that confinement for civil contempt must cease when there is no 'substantial likelihood of compliance.'" (Appendix A, p.25). Consequently, the Court of Appeals reversed the District Court judgment which was based upon a broader view of this Court's case law. The District Court concluded that such a proposition was indeed consistent with this Court's jurisprudence. It therefore determined that the continuation of Mr. Chadwick's civil contempt confinement after seven years (or five years, as it was at the date of the state court decision) could no longer be coercive and thus was a violation of the due process clause, and it was unreasonable for the state court to conclude otherwise. (Appendix B).

The District Court relied upon this Court's early leading case dealing with contempt imprisonment, *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 442-53 (1911) where a 12-month sentence imposed in a civil contempt proceeding for violation of a labor injunction was held to have no coercive force and therefore, was punitive and could not be imposed without affording criminal due process rights. More recently, in *United Mine Workers v. Bagwell*, 512 U.S. 821 (1994) the Court reaffirmed that punitive sanctions are impermissible in civil contempt proceedings. From these cases, the District Court concluded that civil confinement fails to comport with the due process clause when that confinement ceases to be coercive.

The District Court then looked to *Maggio v. Zeitz*, 333 U.S. 56 (1948) for the proposition that civil contempt ceases to be coercive and becomes punitive after a reasonable period. In *Maggio*, where a bankrupt was jailed for contempt because of noncompliance with a turnover order, the opinion by Justice Jackson for eight Justices recognized that a time limitation must be applicable to civil confinement for contempt:

> "It is everywhere admitted that even if he is committed he will not be held in jail indefinitely if he does not comply. His denial of possession is given credit after demonstration that a period in prison does not produce the goods." *Id.* at 76.

Justice Frankfurter, while dissenting from the *res judicata* holding, nevertheless agreed that "the District Court has power to discharge a contemnor when confinement has become futile, or release may be had through the use of habeas corpus . . . ." *Id.* at 90. In discussing in *Maggio* the procedural and substantive issues which arose in cases like this, Justice Jackson relied principally upon the unanimous opinion written by Chief Justice Taft in *Oriel*

v. Russell, 278 U.S. 358 (1929) where the Court expressly analogized the bankruptcy turnover cases to "contempt cases where, under a decree for alimony, it is necessary to resort to coercive measures to secure compliance, and the issue of fact arises as to the ability of the contemnor to pay what is owing." *Id.* at 364-65. *Maggio*, 333 U.S. at 72, repeated with express approval the following passage from the Court's opinion in *Oriel*:

> "In the pending case, or in any other, the court may believe the . . . assertion that he is not now in possession or control of the money . . . , and in that event the civil inquiry is at an end; but it is also true that the assertion may not be believed, and the bankrupt may therefore be . . . restrained of his liberty. . . . I have known a brief confinement to produce the money promptly, thus justifying the court's incredulity, and I have also known it to fail. Where it has failed, and *where a reasonable interval of time has supplied the previous defect in the evidence,* and has made sufficiently certain what was doubtful before, *namely the bankrupt's inability to obey* the order, he has always been released, and I need hardly say that *he would always have the right to be released* . . . . " (Emphasis added).

Oriel, 278 U.S. at 365, quoting *In Re Epstein*, 206 F. 568, 569-70 (E.D. Pa. 1913), *aff'd, sub nom. Epstein v. Steinfeld*, 210 F. 236 (CCA 3d 1914).

This principle that a civil contemnor must be released after a reasonable period of confinement does not produce compliance has long been recognized by the lower federal courts as a fundamental due process principle with solid roots in decisions of this Court: *United States v. Lippitt*, 180 F.3d 873, 876-79 (7th Cir. 1999); *Soobzokov v. CBS, Inc.*, 642 F.2d 28, 31 (2nd Cir. 1981); *Sigety v. Abrams*, 632

F.2d 969, 975, n.6 (2nd Cir. 1980); *In Re Grand Jury Investigation*, 600 F.2d 420, 424-25 (3rd Cir. 1979); *Lambert v. Montana*, 545 F.2d 87, 89-91 (9th Cir. 1976); *In Re Cantazaro*, 663 F. Supp. 1 (D.D.C. 1985).

The Court of Appeals recognized that *Maggio* requires some reasonable limitation upon civil confinement, but concluded that the reasonable limitation would not apply in the instant case where it is presumed that the contemnor has the ability to comply[3] (Appendix A, p.23). That distinction, however, is a misstatement of *Maggio*. The prohibition against unlimited civil confinement for contempt discussed in that decision is not dependent on an ability to comply, but exists notwithstanding such ability. Prior to imposing imprisonment for civil contempt *Maggio* requires that the fact finding judge address a twofold question: "Whether or not there is actually a present ability to comply and whether failure to do so constitutes a deliberate defiance which a jail term will break." *Id.* 333 U.S. at 76. After some period of confinement due process requires that those questions be reconsidered. Contempt may not be adjudged in the first place unless the court is convinced that the contemnor has the ability to comply with the order as to which contempt is sought. *Maggio, Id.* After a reasonable period of fruitless coercive confinement the law ceases trying in the civil context to distinguish inability to comply from adamant refusal and presumes an inability to comply. This doctrine thus recognizes that after the passage of time there is a greater risk that the court has mistaken true inability for mere willfulness and

[3] Mr. Chadwick strongly contests the correctness of and record support for that presumption, which arises from the state court fact finding he challenged in his Petition. See Reason 4 below.

thus the greater risk of wrongful and/or excessive imprisonment.

The Court of Appeals concluded that there was "no federal constitutional bar to Mr. Chadwick's indefinite confinement" (Appendix A, p.26) by the state court because it found no decision of this Court which specifically established a temporal limitation on civil contempt confinement. By narrowing its search for "clearly established federal law as determined by the Supreme Court" to rules which covered the specific case at hand, the Court of Appeals effectively held that the due process clause places no limitation on the length of time a person may be confined for civil contempt. In view of the principles enunciated in *Oriel*, *Gompers*, *Maggio* and *Bagwell*, such a result is unsupportable. The Court of Appeals' search for specificity and its rejection of this Court's boarder jurisprudence in an effort to satisfy § 2254(d)(1) led it into the error that this Court warned against in *Williams*: that a "state court's incorrect legal determination has [never] been allowed to stand because it was reasonable." 529 U.S. at 411.

Several Circuits have begun to struggle with the question of how to identify the "clearly established federal law" for the purpose of § 2254(d)(1). The First Circuit has recognized that "frequently Supreme Court holdings are general in that they erect a framework specifically intended for application to variant factual situations." *O'Brien v. DuBois*, 145 F.3d 16, 25 (1st Cir. 1998). Similarly, the Ninth Circuit concluded that the Supreme Court need not have addressed the identical factual circumstances. *VanTran v. Lindsey*, 212 F.3d 1143, 1154 (9th Cir. 2000). Indeed to insist that it should, would deprive the "unreasonable application" clause of significance, a result

which *Williams* proscribed. 529 U.S. at 404. The Second Circuit was required in a case concerning the admissibility of identification evidence to consider the application of both general due process precedents and a "bright line" Rule. It concluded that both constituted clearly established federal law for the purpose of § 2254(d)(1). *Kennaugh v. Miller*, 289 F.3d 36, 42-43 (2nd Cir. 2002). The Sixth Circuit, faced with a case concerning the denial of a jury instruction on self defense, was unable to identify a Supreme Court case which enunciated the circumstances under which such an instruction should be given. It concluded, nevertheless, that under this Court's general due process case law the instruction at issue was required, declaring that clearly established federal law "also clearly includes legal principles and standards enunciated in the [Supreme] Court's decisions." *Taylor v. Withrow*, 268 F.3d 846, 850-51 (6th Cir. 2002). Judge Boggs, however, disagreed and in his concurring opinion expressed the view that the Supreme Court must have expressly stated a rule in order for a habeas corpus court to apply it under § 2254(d)(1). *Id.* at 854.

The Court of Appeals in the instant case appears to have adopted the view of Judge Boggs in *Taylor*. Justice O'Connor, in her concurring opinion in *Williams* reminded that "We have always held that federal courts, even on habeas, have an independent obligation to say what the law is." 529 U.S. at 411. Although § 2254(d)(1) limits the source of law to this Court's jurisprudence, a too narrow focus in identifying that law will cause habeas corpus courts to make an erroneous statement of the law and thereby, as in the instant case, reach the incorrect result.

3. CERTIORARI SHOULD BE GRANTED TO SETTLE WHETHER AND UNDER WHAT CIRCUMSTANCES A HABEAS CORPUS COURT IS REQUIRED UNDER 28 U.S.C. § 2254(d)(1) TO REJECT A STATE COURT'S UNREASONABLE FAILURE TO EXTEND A SETTLED CONSTITUTIONAL PRINCIPLE TO A NEW SETTING WHERE IT OUGHT TO APPLY.

Mr. Chadwick urged the courts below to find that the state court unreasonably failed to extend the holding of this Court in *United Mine Workers v. Bagwell*, 512 U.S. 821 (1994) to his case. In *Bagwell*, where the state court imposed what it characterized as a civil contempt fine of $52 million for violation of a labor injunction, this Court held that the contemnor was entitled to a jury trial and the other rights of a criminal accused because of the seriousness of the sanction which caused that penalty to be punitive in nature. The Court reasoned that the possibility that a serious sanction could be imposed and the need to decide a material fact issue required an impartial fact finder – a jury as opposed to the offended trial judge – and criminal law protections. The Court was concerned that "civil contempt proceedings leave the offended judge solely responsible for identifying, prosecuting, adjudicating and sanctioning the contemptuous conduct." *Id.* at 881, and as Justice Scalia pointed out in his concurring opinion, "That one and the same person should be able to make the rule, to adjudicate its violation and to assess its penalty is out of accord with our usual notions of separation of powers." *Id.* at 840. Mr. Chadwick argued that the *Bagwell* holding should have been extended to the serious imprisonment sanction involved in the instant case and that he should have been afforded a jury trial and attendant criminal law protections on the critical issue of his ability to comply with the state court order.

Although *Bagwell* itself involved a serious fine, the opinion strongly suggests that the holding would apply equally where the sanction imposed is a serious imprisonment. In fact, as part of the discussion as to what constitutes a serious sanction, the opinion noted, *Id.* 512 U.S. at 837, n.5, the decision in *Muniz v. Hoffman*, 422 U.S. 454 (1975) for the proposition that an offense is "petty" if it involves imprisonment of not more than six months or a fine of $5,000 or less. The rationale for the heightened due process requirements in *Bagwell* also would apply with equal force regardless of whether the contempt is labeled civil or criminal. The "elusive distinction" (*Id.* 512 U.S. at 830) between criminal and civil contempt which *Bagwell* tried to erase where a serious sanction was involved frequently continues to be the basis on which lower courts determine what process is due.[4] As one court stated, "It is not surprising that District Courts around the country, reluctant to surrender part of their power to coerce obedience to their decrees, have resisted the logic of *Bagwell*." *Evans v. Williams*, 206 F.3d 1292, 1297 (D.C. Cir. 2000). Thus, an additional reason to grant certiorari in this case is to settle that *Bagwell* did not intend to distinguish between civil and criminal contempt where a serious sanction was at issue.

---

[4] See *Harris v. City of Philadelphia*, 47 F.3d 1311, 1329 (3rd Cir. 1995) (criminal rights would apply in civil contempt only if sanction was unconditional); *In Re E.I. DuPont, Benlate Litigation*, 99 F.3d 363, 368-69 (11th Cir. 1996) (criminal rights applied only because purpose of sanction was deemed non-coercive); *New York State N.O.W. v. Terry*, 159 F.3d 86, 93-94 (2nd Cir. 1998) (criminal rights attached only because no condition was stated); *American Airlines Inc. v. Allied Pilots Assn.*, 228 F.3d 574, 583 (5th Cir. 2000) (criminal rights would not apply in civil contempt).

The Court of Appeals "assumed the validity of the principle of unreasonable failure to extend" (Appendix A, p.15-16, n.8) but did not discuss Mr. Chadwick's argument that the *Bagwell* holding should have been extended to his case. Instead, its opinion relied upon *Bagwell* for a proposition the *Bagwell* opinion does *not* support – that this Court in *Bagwell* endorsed an unlimited right to confine a contemnor for civil contempt. (Appendix A, p.17). In support of this argument, the Court of Appeals cites a sentence in the *Bagwell* opinion, 512 U.S. at 528, which states: "The paradigmatic coercive, civil contempt sanction, as set forth in *Gompers*, involves confining a contemnor indefinitely until he complies with an affirmative command. . . . " This sentence appears in the introduction to the opinion where the Court was simply describing the historic differences between civil and criminal contempt. Nothing in *Bagwell* suggests that use of the term "indefinitely" means "permanently" and without other recourse. Nor is there any suggestion that *Bagwell* intended to overrule the principle which limited confinement for civil contempt that already was well established when it was reaffirmed in *Maggio*. The extent of confinement which lawfully could be imposed as a sanction for contempt was not even implicated in *Bagwell*. The issues that the Court considered in *Bagwell* and which were reflected in its holding concerned the process that was due to contemnors in jeopardy of serious sanctions – process that the Court of Appeals declined to extend to Mr. Chadwick.

Bagwell is part of a large body of due process cases decided by this Court in the last thirty years on which Mr. Chadwick relied for the proposition that he had an entitlement to due process protections not afforded. A number of these cases concerned the protections which should apply to the civil confinement of the mentally ill, a circumstance closely analogous to civil contempt. In *Jackson v.*

Indiana, 406 U.S. 715, 738 (1972) the Court held that due process requires a reasonable relation between the nature and duration of the commitment and the purpose of the commitment. *McNeil v. Director, Patuxent Institution*, 407 U.S. 245, 250-51 (1972) found that an indefinite confinement following the expiration of a criminal sentence on mental health grounds would be a due process violation. In *Foucha v. Louisiana*, 504 U.S. 71, 80 (1972) the Court required proof of dangerousness before a mentally ill person could be civilly confined. Subsequently, *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997) noted limitations which must be imposed on civil confinement under a state sexual predator statute.

In another realm related to civil confinement the Court recently construed a statute governing the deportation of aliens to limit a post-removal order of civil detention to a period reasonably necessary to bring about the alien's removal, generally no more than six months. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In reaching that decision the Court asserted that "government detention violates that [due process] Clause unless the detention is ordered in . . . certain special and narrow nonpunitive circumstances . . . where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.*, at 690 (internal citations and quotations omitted). Although urged to do so, the Court of Appeals did not extend this solid line of precedent to the circumstances of this case.

Justice O'Connor's opinion for the Court in *Williams* requires a habeas corpus court to conduct an analysis under both the "contrary to" and "unreasonable application" clauses of § 2254(d)(1). *Id.* 529 U.S. at 407. Although that opinion defined the unreasonable application clause to include an unreasonable failure to extend a legal

principle to a new context where it ought to apply, the Court did not elaborate how such extension principle should be applied. *Id.* at 408-9. In *Ramdass v. Angelone*, 530 U.S. 156, 166 (2000) the Court in a plurality opinion restated the principle but again did not provide guidance as to its implementation. There is, of course, a close connection between the unreasonable failure to extend and the identification of clearly established federal law for the purpose of § 2254(d)(1). If the search for federal law is limited to specific Supreme Court precedent, as the Court of Appeals in the instant case maintained, it is difficult to envision that the extension principle could be applied at all. Thus, it is not surprising that the Court of Appeals did not apply the principle in this case. On the other hand, where a habeas corpus court sought federal law in this Court's general jurisprudence, it recognized that that law could be derived through application of the extension principle. *Kennaugh*, 289 F.3d at 45; *Taylor*, 288 F.3d at 851. The instant case affords an opportunity for the Court to address this issue.

4. CERTIORARI SHOULD BE GRANTED TO SETTLE WHETHER A HABEAS CORPUS REVIEWING COURT IS OBLIGED TO PERFORM A DE NOVO REVIEW OF THE RECORD WHEN IT RESTS ITS DECISION ON STATE COURT FACTFINDING CHALLENGED UNDER 28 U.S.C. § 2254(d)(2) AND THE DISTRICT COURT DID NOT HOLD AN EVIDENTIARY HEARING.

The decision of the Court of Appeals is based upon the assumption, derived solely from the state fact finding, that Mr. Chadwick has the ability to comply with the order as to which he was held in contempt. Mr. Chadwick's petition

challenged that fact finding under 28 U.S.C. § 2254(d)(2) as unreasonable in light of the record evidence.

The District Court did not hold an evidentiary hearing, but concluded that Mr. Chadwick had the ability to comply based solely on the state court fact finding. The District Court did not examine the state court fact finding in any depth, however, granting relief on other grounds. The appeal, filed by Mrs. Chadwick, did not raise this issue, nor was it briefed or argued. Since Mr. Chadwick was not aggrieved by the District Court order he could not raise the issue on appeal. Mr. Chadwick thus faces a decision by the Court of Appeals which is premised upon the very fact finding he challenged in his Petition, but which was not litigated.

The Court of Appeals reviewed the District Court's legal conclusions de novo and noted that "If a District Court has a proper occasion to make findings of fact, they are reviewed for clear error." (Appendix A, p.12, n.6). Although the Court of Appeals noted (*Id.* p.3) that the District Court accepted the state courts' findings as to Mr. Chadwick's ability to comply, these findings were not further reviewed. The Court of Appeals noted, in fact, that "no § 2254(d)(2) inquiry is necessary here." *Id.*, p.15, n.7.

Whether the state court record properly supported that finding, the issue presented in the petition for habeas corpus, was a mixed question of fact and law. Had the District Court based its decision on this issue, it doubtless would have been reviewed de novo. As a result of the Court of Appeals decision, however, this question which the Court of Appeals found significant but the District Court did not, received no review at all. The effect was to eliminate any right Mr. Chadwick had to habeas corpus relief under § 2254(d)(2).

Such a result does not give proper effect to the statutory provision. The Sixth Circuit has attempted to resolve this problem by conducting an independent examination of the record to make its own determination as to contested facts in cases where the District Court did not hold an evidentiary hearing. *Taylor*, 288 F.3d at 850. It is submitted that such a procedure, or remand to the District Court for an evidentiary hearing, should be followed in cases like the instant one to avoid foreclosing § 2254(d)(2) claims.

5. CERTIORARI SHOULD BE GRANTED TO SETTLE WHETHER A PRIVATE PARTY HAS ARTICLE III STANDING TO APPEAL IN A HABEAS CORPUS PROCEEDING UNDER 28 U.S.C. § 2254 WHERE NO STATE RESPONDENT HAS APPEALED.

The Court of Appeals found that Mr. Chadwick's former wife had standing to appeal the grant of habeas corpus, notwithstanding that none of the state respondents filed a notice of appeal. This question has not previously been addressed by this Court and there are sound legal and policy reasons not to permit this result.

In *Diamond v. Charles*, 476 U.S. 54 (1986) this Court dismissed an appeal by a physician who sought to challenge the constitutionality of a state abortion control law after the state had abandoned its interest in the case. In the absence of the state as a party, the Court held that there was no case for him to join. He would have to establish Article III standing on his own, which he was unable to do because he had no direct stake, merely an interest in the abortion process.

The Court of Appeals concluded in the instant case that Mrs. Chadwick could establish standing in her own

right because she met the requisite tests: an injury in fact which is concrete, not conjectural or hypothetical; a fairly traceable connection between the alleged injury and the other party; and that it was likely, as opposed to speculative, that the injury will be addressed by a decision favorable to the appellant. (Appendix A, p.7-8). See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-63 (1992).

The alleged injury, however, must be legally cognizable. *Diamond*, 476 U.S. at 64. As that decision held, "a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another." *Id.*, citing *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973). By the same reasoning, a private citizen lacks a judicially cognizable interest in the imprisonment of another. Just as the Court pointed out in *Diamond*, 476 U.S. at 65, "the state alone is entitled to create a legal code," only the state is empowered to impose the sanction of imprisonment. Thus, while Mrs. Chadwick may have a strong interest in keeping her ex-husband in jail, that is not an interest that the law permits a private individual to pursue. A contrary result would allow crime victims to oppose habeas corpus relief sought by their alleged perpetrators. This is not a result that our system of justice ever has recognized. Indeed, this Court has refused to permit an interested private party to prosecute a criminal contempt, requiring the appointment of a disinterested prosecutor. *Young v. U.S. ex rel. Vuitton et fils, S.A.*, 481 U.S. 787 (1987). In a recent decision, this Court did permit a private environmental group to seek injunctive relief and civil penalties against an alleged violator of the Clean Water Act, even though the penalties would be paid to the government. *Friends of Earth, Inc. v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, 184-88 (2000). There, however, the Act specifically authorized private enforcement. There is no suggestion that the Court would seek to extend that rule

to create standing to enforce a criminal penalty like imprisonment, and the opinion distinguished *Linda R.S.* partly on that basis. 528 U.S. at 188, n.4.

Even in the event it should be determined that Mrs. Chadwick's interest is legally cognizable, it still fails to meet the test of a real, non-speculative injury. The Court of Appeals reasoned that the potential reduction in Mrs. Chadwick's distribution of marital property, if Mr. Chadwick were not under the pressure of imprisonment to pay the money at issue, was sufficient to conclude that Mrs. Chadwick had demonstrated a palpable injury which was addressable by the Court (Appendix A, p.8). However, the money at issue is not payable to Mrs. Chadwick; she has not received any award of marital property or money, so that any injury that she might claim would be hypothetical and contingent, not real and actual. Mrs. Chadwick has the burden of proving her injury in order to establish standing, *Defenders of Wildlife*, 504 U.S. 560-63, and failed to prove that she will sustain any loss if Mr. Chadwick is released from confinement that she would not suffer in any event. Moreover, if Mrs. Chadwick's injury is not hypothetical then her injury is simply as an unpaid creditor, removing all doubt that Mr. Chadwick's imprisonment is for the purpose of coercing the payment of money, notwithstanding that imprisonment for debt is everywhere abolished.

Furthermore, Mrs. Chadwick's alleged injury, as framed by the Court of Appeals, lacks a nexus with the issue – lawfulness of confinement – in a habeas corpus case. The injury must be fairly traceable to the challenged conduct for standing to be shown. *Allen v. Wright*, 468 U.S. 737, 754 (1984). If Mrs. Chadwick has suffered an injury, it is because she has not proven that Mr. Chadwick has possession of the cash she seeks, despite having conducted

extensive discovery. No injury is caused simply by the release of Mr. Chadwick from confinement. In addition, if Mrs. Chadwick has sustained an injury as alleged, a habeas corpus court cannot address it. Such a court is concerned only with the lawfulness or not of confinement. The Court cannot give her the money or property she seeks.

Whether a private party has standing to appeal the grant of habeas corpus relief may be a matter of first impression. The Court of Appeals cited only one case where the issue was litigated, *Martin-Trigona v. Shiff*, 702 F.2d 380 (2nd Cir. 1983), where a bankrupt debtor sought habeas corpus relief to question the power of a bankruptcy court to order him imprisoned for contempt for refusal to submit to examination by the trustees in bankruptcy. This case was unique in that because the bankrupt named the judge as the respondent the court ordered the trustees to respond. The trustees, however, were not ordinary private parties but were officers appointed by and responsible to the court. It does not appear that the court considered the issue of a legally cognizable interest in the imprisonment of the bankrupt. The contempt at issue, however, related directly to the duties the trustees were appointed to perform and thus it was relatively easy to conclude that the trustees had a direct and real interest.

These unique considerations aside, the notion that a private party may control habeas corpus litigation raises troubling issues. The opportunity, as has been demonstrated in the instant case, to use the power of the state to deprive another of his freedom for personal retribution and to achieve leverage in a private lawsuit, is one that the law should not abet or encourage.

CONCLUSION

For the foregoing reasons the Petitioner respectfully prays that his Petition for a Writ of Certiorari be granted.

Respectfully submitted,

H. BEATTY CHADWICK
P.O. Box 23
Thornton, PA 19373
(610) 595-2740, ext. 317

APPENDIX

A. Opinion of the United States Court of Appeals for the Third Circuit, December 4, 2002 ..... App. 1

B. Opinion of the United States District Court for the Eastern District of Pennsylvania, January 3, 2002 ..... App. 27

C. Order of Supreme Court of Pennsylvania, February 8, 2000 ..... App. 47

D. Order of United States Court of Appeals for the Third Circuit Sur Petition for Rehearing, December 4, 2002 ..... App. 48

E. Judgment of United States Court of Appeals for the Third Circuit, August 20, 2002 ..... App. 50

F. Order of Court of Common Pleas of Delaware County, Pennsylvania, July 22, 1994 ..... App. 52

G. Order of Court of Common Pleas of Delaware County, Pennsylvania, November 2, 1994 ..... App. 54

H. Extract from Petition for Writ of Habeas Corpus showing grounds for relief, filed in United States District Court for the Eastern District of Pennsylvania, March 2, 2000 ..... App. 57

APPENDIX A

PRECEDENTIAL

Filed December 4, 2002

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-1173

H. BEATTY CHADWICK

v.

JAMES JANECKA, WARDEN, DELAWARE COUNTY PRISON; THE DISTRICT ATTORNEY OF COUNTY OF DELAWARE; THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA

v.

BARBARA JEAN CROWTHER CHADWICK,
(Intervenor in District Court)

BARBARA JEAN CROWTHER CHADWICK,
Appellant

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

District Court Judge: Honorable Norma L. Shapiro
(D.C. No. 00-cv-01130)

Argued: May 24, 2002

Before: ALITO, MCKEE, and WALLACE,* *Circuit Judges.*

(Opinion Filed: December 4, 2002)

---

*The Honorable J. Clifford Wallace, Senior Judge of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

ALBERT MOMJIAN
NANCY WINKELMAN (Argued)
KEVIN C. McCULLOUGH
STEPHEN A. FOGDALL
Schnader Harrison Segal &
Lewis, L.L.P.
1735 Market Street, Suite 3800
Philadelphia, PA 19103

Counsel for Appellants

THOMAS S. NEUBERGER (Argued)
Thomas S. Neuberger, P.A.
2 East Seventh Street, Suite 302
Wilmington, DE 19801

ANNA M. DURBIN
PETER GOLDBERGER
50 Rittenhouse Place
Ardmore, PA 19003

Co-Counsel for Appellee

D. MICHAEL FISHER
WILLIAM H. RYAN, JR.
ROBERT A. GRACI
AMY ZAPP
Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

Counsel for Amicus Curiae
Pennsylvania Office of Attorney
General

OPINION OF THE COURT

ALITO, *Circuit Judge*:

This appeal was taken from an order granting a petition for a writ of habeas corpus filed by Mr. H. Beatty Chadwick under 28 U.S.C. § 2254. The petitioner has applied eight times to the courts of Pennsylvania and six times to the federal district court for release from incarceration for civil

contempt for refusing to comply with an order in a matrimonial proceeding directing him to pay over $2.5 million into an escrow account. In the present case, the District Court concluded that the petitioner had exhausted state remedies even though he had not applied to the Pennsylvania Supreme Court for review of the adverse decision of the Superior Court. In the view of the District Court, it was sufficient that the petitioner subsequently submitted a habeas petition to the Pennsylvania Supreme Court in its original jurisdiction pursuant to 42 Pa. Cons. Stat. § 721. With respect to the merits of the present proceeding, the District Court accepted the state courts' repeated findings that the petitioner *is able* to comply with the order directing him to pay the funds into escrow, but the District Court nevertheless held that the length of petitioner's confinement — then almost seven years — meant that the contempt order had lost its coercive effect and that confinement for civil contempt was no longer constitutional. On appeal, the petitioner defends that decision of the District Court but does not contest the state courts' findings that he is able to comply with the underlying order but simply refuses to do so. We reverse.

I.

In November 1992, Mrs. Barbara Chadwick filed for divorce in the Delaware County (Pennsylvania) Court of Common Pleas. During an equitable distribution conference in February 1993, Mr. Chadwick informed the state court and Mrs. Chadwick that he had unilaterally transferred $2,502,000.00 of the marital estate to satisfy an alleged debt to Maison Blanche, Ltd., a Gibraltar partnership.

It was later discovered that (1) one of the principals of Maison Blanche had returned $869,106.00 from Gibraltar to an American bank account in Mr. Chadwick's name and that these funds had then been used to purchase three insurance annuity contracts; (2) $995,726.41 had been transferred to a Union Bank account in Switzerland in Mr. Chadwick's name; and (3) $550,000.00 in stock certificates that the petitioner claimed he had transferred to an unknown barrister in England to forward to Maison Blanche had never been received. The state court then

entered a freeze order on the marital assets on April 29, 1994.

In May 1994, Mr. Chadwick redeemed the annuity contracts and deposited the funds in a Panamanian bank. After a hearing on July 22, 1994, the court determined that Mr. Chadwick's transfer of the money was an attempt to defraud Mrs. Chadwick and the court. At that time, the court ordered petitioner to return the $2,502,000.00 to an account under the jurisdiction of the court, to pay $75,000.00 for Mrs. Chadwick's attorney's fees and costs, to surrender his passport, and to remain within the jurisdiction. Mr. Chadwick refused to comply, and Mrs. Chadwick thereafter filed a petition to have him held in civil contempt. Mr. Chadwick failed to appear at any of the three contempt hearings, but his attorney was present. The court found Mr. Chadwick in contempt of the July 22, 1994, order and issued a bench warrant for his arrest.

After learning of the bench warrant, Mr. Chadwick fled the jurisdiction but was arrested and detained on April 5, 1995. The state court determined that Mr. Chadwick had the present ability to comply with the terms of the July 22, 1994, order and set bail at $3,000,000. Mr. Chadwick could have been released from custody either by posting bail or by complying with the July 22, 1994, order. To date, he has done neither.

Since his confinement, Mr. Chadwick has applied eight times to the state courts[1] and six times to the federal court[2]

---

1. The state petitions include: (1) an emergency petition for release, which was denied by the Court of Common Pleas and affirmed by the Superior Court; (2) six state habeas petitions, all of which were denied; and (3) a petition for release from imprisonment or, in the alternative, house arrest, which was denied. *See* Appellant's Br. at 8-12.

2. The federal petitions include: (1) an emergency motion for injunctive relief pursuant to 42 U.S.C. § 1983, which was denied because abstention was appropriate under the doctrine of *Younger v. Harris*, 401 U.S. 37 (1971); (2) an emergency motion pursuant to 42 U.S.C. § 1983, which was denied, or, in the alternative, habeas corpus under 28 U.S.C. § 2241, which was dismissed for failure to exhaust state remedies; (3) a third federal habeas petition, which was denied for failure to exhaust state remedies; (4) a petition for reconsideration of the dismissal of the

to gain release from incarceration. After the trial court denied his sixth state habeas petition, the Superior Court affirmed the decision on April 23, 1997, stating:

> Instantly, appellant cites to the fact that he has been incarcerated since April 5, 1995. He claims the length of his incarceration, his age, poor health, inability to pursue his career and repeated hearings where he has refused compliance suggests that there is no possibility that he will comply with the order. Appellant admits that no court in this jurisdiction has adopted this test and we will not do so here. While it seems reasonable that at some point a temporal benchmark should be adopted to determine when contempt incarceration becomes impermissibly punitive we think that it is for our high court to make such a determination.

Chadwick v. Janecka, No. 00-CV-1130, 2000 U.S. Dist. LEXIS 21732, at *14-15 (E.D.Pa. Dec. 11, 2000) (internal citation omitted). Despite the Superior Court's invitation that the petitioner ask the Pennsylvania Supreme Court to decide the point at which incarceration for contempt becomes punitive, the petitioner did not file an allocatur petition in the state supreme court.

Later, on July 18, 1997, petitioner filed another petition for *federal* habeas relief, which was dismissed for failure to exhaust state court remedies. The District Court wrote:

> Although Mr. Chadwick has forfeited his right to seek Supreme Court review of the Superior Court's April 23, 1997 denial of his sixth state habeas petition, *see* Pa.R.App.P. 1113(a) (petition for allowance of appeal must be filed within 30 days of order), he would not be barred from filing a seventh state habeas petition based on his present confinement of approximately thirty-seven months. Under Pennsylvania law, Mr.

---

third federal habeas petition, which was also denied for failure to exhaust state remedies; (5) a fourth federal habeas petition, which was also denied for failure to exhaust state remedies; and (6) a fifth federal habeas petition, which is the basis of this appeal. *See* Appellant's Br. at 12-13.

> Chadwick can file a seventh state habeas petition in the Court of Common Pleas and exhaust his appellate remedies, *see* 42 Pa.Cons.Stat.Ann. § 931, *or petition directly in the Supreme Court, which has original jurisdiction over habeas corpus proceedings. See* 42 Pa.Cons.Stat.Ann. § 721(1). But unless the issues presented in the federal habeas petition have all been first presented to the Supreme Court, the district court may not exercise jurisdiction. *See Lambert*, 134 F.3d at 515 (requiring "complete exhaustion"); *Swanger*, 750 F.2d at 295 (raising claim before Supreme Court in petition for allowance of appeal satisfies exhaustion requirement).

Chadwick v. Andrews, No. 97-4680, 1998 WL 218026, at *5 (E.D.Pa. April 30, 1998) (emphasis added). Because Mr. Chadwick had not sought review in the Pennsylvania Supreme Court on the issue presented in his federal petition, that petition was dismissed.

In September 1999, Mr. Chadwick filed a *pro se* Application for Leave to File Original Process (his seventh state habeas action) with the Pennsylvania Supreme Court. Mrs. Chadwick sought permission to intervene, and opposed the application and the state habeas petition. In a *per curiam* order dated February 8, 2000, the Pennsylvania Supreme Court granted the request to file original process and the request to file an answer, but the court denied the petition for habeas corpus.

On March 2, 2000, Mr. Chadwick filed the instant petition for federal habeas relief. The District Court granted that petition on January 3, 2002, but stayed its order for 30 days to "allow appeal and application for further stay of this court's order to the appellate court." *Chadwick v. Janecka*, No. 00-1130, 2002 U.S. Dist. LEXIS 10, at *27 (E.D.Pa. Jan.3, 2002). Mrs. Chadwick took this timely appeal. By order dated January 31, 2002, we granted Mrs. Chadwick's motion for a stay pending appeal. The United States Supreme Court thereafter denied Mr. Chadwick's Application for Enlargement and to Vacate Stay.

II.

The first issue we must address is whether Mrs. Chadwick has standing to proceed on appeal. Mr. Chadwick

argues that because Mrs. Chadwick was an intervenor in the District Court, she lacks Article III standing. He further argues that, because the respondents — the warden, the Delaware County District Attorney, and the Attorney General of the Commonwealth — did not appeal, we do not have jurisdiction to entertain this appeal.

The United States Supreme Court has stated that "an intervenor's right to continue a suit in the absence of the party on whose side the intervention was permitted is contingent upon a showing by the intervenor that he fulfills the requirements of Art[icle] III." *Diamond v. Charles*, 476 U.S. 54, 68 (1986). Under Article III of the United States Constitution, the judicial power extends only to "Cases" and "Controversies." As noted in *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765, 771 (2000):

> a plaintiff must meet three requirements in order to establish Article III standing. *See, e.g., Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 180-181, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000). First, he must demonstrate "injury in fact" — a harm that is both "concrete" and "actual or imminent, not conjectural or hypothetical." *Whitmore v. Arkansas*, 495 U.S. 149, 155, 109 L. Ed. 2d 135, 110 S. Ct. 1717 (1990) (internal quotation marks and citation omitted). Second, he must establish causation — a "fairly . . . traceable" connection between the alleged injury in fact and the alleged conduct of the defendant. *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41, 48 L. Ed. 2d 450, 96 S. Ct. 1917 (1976). And third, he must demonstrate redressability — a "substantial likelihood" that the requested relief will remedy the alleged injury in fact. *Id.*

See also, e.g., Valley Forge Christian College v. Americans United For Separation of Church & State, 454 U.S. 464, 472 (1982); *In re Grand Jury*, 111 F.3d 1066, 1071 (3d Cir. 1997).

We have little difficulty concluding that Mrs. Chadwick meets all of these requirements here. First, Mrs. Chadwick clearly has suffered and continues to suffer an injury in

fact that is both "concrete" and "actual," "not conjectural or hypothetical." Mr. Chadwick has placed a substantial sum of money beyond the reach of the state court before whom the matrimonial case is pending. If the decision of the District Court is affirmed, Mr. Chadwick will be released from jail and will be relieved of the pressure to return this money for equitable distribution. Second, Mrs. Chadwick's injury is unquestionably traceable to Mr. Chadwick's refusal to comply with the state court order under which he is being held. The District Court's order would erase the effect of the state court order requiring the return of the funds and would significantly reduce Mrs. Chadwick's share of the marital estate. Third, Mrs. Chadwick's injury may be redressed by a favorable decision here. A reversal of the District Court's order granting Mr. Chadwick's petition would require him to remain in prison until he returns the $2.5 million to the state court for later distribution.

In arguing that Mrs. Chadwick lacks standing, the petitioner relies principally on *Diamond v. Charles*, 476 U.S. 54 (1986), but that case is easily distinguishable. The *Diamond* case involved a constitutional attack on an Illinois statute restricting abortions. *Id.* at 56. Diamond, a pediatrician, successfully moved to intervene in the District Court, based on his conscientious objection to abortion and his status as a pediatrician and the father of a minor daughter. *Id.* at 66. When the District Court permanently enjoined provisions of the statute and the Court of Appeals affirmed, the State of Illinois did not appeal to the Supreme Court, but Diamond did. *Id.* at 62-63. The Court held that Diamond could not maintain the appeal as the sole appellant because he lacked Article III standing. *Id.* at 64-71. Noting that Illinois, by not appealing, had accepted the decision that its statute was unconstitutional, the Court observed that even if it upheld the statute, Diamond, a private citizen, could not compel the state to enforce it. *Id.* at 64-65. In addition, the Court explained, Diamond could not establish that he had or would suffer injury in fact. *Id.* at 65-71. Diamond argued that if the statute were upheld, there would be fewer abortions and greater demand for his services as a pediatrician, but the Court dismissed this argument as speculative. *Id.* at 66. The Court likewise rejected Diamond's contention that he had standing

because of his interest in the standards of medical practice relating to abortion. *Id.* at 66-67. The Court stated that Diamond's abstract interest in the issue of abortion could not substitute for the concrete injury demanded by Article III. *Id.* In response to Diamond's claim of standing as the father of a minor daughter, the Court noted that the validity of the parental notification provision of the statute was not at issue in the appeal and Diamond had not provided factual support to show that the provisions that were at issue threatened him with any concrete injury. *Id.* at 67. Finally, the Court held that Diamond could not assert any constitutional rights of unborn fetuses and that the award of fees against him in the District Court could not "fairly be traced to the Illinois Abortion Law." *Id.* at 70.

Other than the fact that Diamond and Mrs. Chadwick are both intervenors, the two cases have little in common. Mrs. Chadwick, as noted, has a direct financial interest: she wants Mr. Chadwick to produce a very substantial sum of money in which she claims a share. By contrast, Diamond's claim that upholding the Illinois law would result in more live births and thus increase his income as a pediatrician was highly speculative and an obvious makeweight. *Diamond* was a classic case of an attempt to litigate an abstract legal issue; the present case involves a concrete monetary interest.

Mr. Chadwick argues, however, that Mrs. Chadwick has no concrete injury at stake because "even if she were somehow to secure a reversal of the district court's order, the respondents would still be required to release Mr. Chadwick, because they did not appeal." Appellee's Br. at 21. We reject this highly technical argument and find *Martin-Trigona v. Shiff*, 702 F.2d 380 (2d Cir. 1983), instructive on the question whether someone other than the legal custodian of a prisoner may appeal an adverse decision in a habeas proceeding. In *Martin-Trigona*, a bankruptcy judge ordered a debtor imprisoned for civil contempt when he refused to submit to examination by the trustees. *Id.* at 381. The debtor filed a petition for a writ of habeas corpus, the District Court granted the motion, and the trustees appealed. *Id.* The Second Circuit held that the trustees were the real parties in interest because "[t]hey

ha[d] a legitimate interest in seeing to it that Martin-Trigona testifie[d] to the location of certain assets, books, and records that are necessary to the administration of the estates." *Id.* at 386. Because the trustees' interests were sufficiently affected by the District Court's order, the Second Circuit held that the trustees had standing to appeal even though they were not the custodian of the debtor. *Id.*; *Cf. United States ex rel. Thom v. Jenkins*, 760 F.2d 736 (7th Cir. 1985) (private party who prosecuted contempt proceedings against judgment debtor was respondent and appellee on appeal of debtor's habeas petition following jailing for contempt). *Martin-Trigona* is analogous to the case at bar because Mrs. Chadwick — like the trustees — is the party who has "a legitimate interest in seeing to it," 702 F.2d at 386, that Mr. Chadwick returns a substantial portion of the marital estate to the court. We find the decision in *Martin-Trigona* to be persuasive.

The only case cited by Mr. Chadwick in support of his position is far afield. In *Carter v. Rafferty*, 826 F.2d 1299, 1303-04 (3d Cir. 1987), the District Court granted habeas petitions filed by two prisoners who had been tried and convicted together in state court. The habeas respondents appealed, but their notice of appeal "specifically limited itself to the order releasing [one of the prisoners]." *Id.* at 1303. Noting that what was then Rule 3(c) of the Federal Rules of Appellate Procedure[3] required that a notice of appeal "designate the judgment, order, or part thereof appealed from," the Court held that it lacked jurisdiction to consider the portion of the District Court's judgment relating to the other prisoner because the appellants had failed to specify that they were appealing that part of the judgment. *Id.* at 1304. Thus, *Carter* does not stand for the proposition that only the person with the keys to the jail has standing to appeal an order granting a writ of habeas corpus. Rather, *Carter* holds that only the portions of an order specified in a notice of appeal may be challenged in the appeal. We accordingly hold that Mrs. Chadwick has Article III standing to pursue the present appeal. We have considered all of Mr. Chadwick's standing arguments, and we find them to be devoid of merit.

---

3. *See* current Fed. R. App. Proc. 3(c)(1)(B).

III.

Mrs. Chadwick argues that Mr. Chadwick did not exhaust all available state court remedies before presenting his claims to the federal court in his habeas petition. *See* 28 U.S.C. § 2254(b)(1). Mrs. Chadwick makes two exhaustion arguments. First, she argues that Mr. Chadwick did not fairly present to the Pennsylvania Supreme Court the same claims that he raised in his federal habeas petition. *See Picard v. Connor*, 404 U.S. 270, 275-76 (1971). Specifically, Mrs. Chadwick urges reversal because the period of confinement listed in Mr. Chadwick's application for leave to file original process before the Pennsylvania Supreme Court — "over 50 months" (i.e., four years and two months) — and the period of confinement for which the District Court granted habeas — "nearly seven years" — are not the same. Second, Mrs. Chadwick argues that Mr. Chadwick's application for leave to file original process did not fairly present the claims to the Pennsylvania Supreme Court where, although it has original jurisdiction in habeas matters,[4] the Pennsylvania Supreme Court will ordinarily refer habeas petitions to the appropriate lower court, unless there exists "imperative necessity or apparent reason why expedition is desirable or required." *See Commonwealth ex rel. Paylor v. Claudy*, 366 Pa. 282, 287 (1951).

Although Mrs. Chadwick would have us decide the question of exhaustion, we decline to do so here because, under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. 104-132, 110 Stat. 1214 (enacted April 24, 1996), we may deny a habeas petition on the merits even though state remedies may not have been exhausted. *See* 28 U.S.C. §2254(b)(2); *see also Pennsylvania ex rel. Craig v. Maroney*, 348 F.2d 22, 33 (3d Cir. 1965); *In re Ernst*, 294 F.2d 556, 561-62 (3d Cir. 1961).

---

4. Pennsylvania statutes state that "[t]he Supreme Court shall have original but not exclusive jurisdiction of all cases of . . . Habeas corpus." 42 Pa. Cons. Stat. § 721.

IV.

A.

Turning to the merits,[5] we must first address the proper scope of review in this case. The parties dispute whether the standard of review set out in 28 U.S.C. § 2254(d) applies here.[6]

Relying on *Everett v. Beard*, 290 F.3d 500, 507-08 (3d Cir. 2002); *Appel v. Horn*, 250 F.3d 203, 209-12 (3d Cir. 2001); and *Hameen v. Delaware*, 212 F.3d 226, 248 (3d Cir. 2000), Mr. Chadwick argues that 28 U.S.C. § 2254(d) is inapplicable in this case because the "state supreme court, after accepting Mr. Chadwick's original habeas corpus petition for adjudication on its merits, denied relief without any statement of reasons at all." Appellee's Br. at 33. According to Mr. Chadwick, under these circumstances, 28 U.S.C. § 2254(d) "simply does not apply." Appellee's Br. at 33. We reject this argument, which is contrary to Supreme Court precedent and misinterprets our court's prior decisions.

Under 28 U.S.C. § 2254(d)(1)(emphasis added), if a state prisoner's habeas claim "was *adjudicated on the merits* in State court proceedings," our standard of review is narrow: we may not reverse "unless the adjudication of the claim . . . resulted in a decision that was contrary to, or involved

---

5. After our decision reversing the decision of the District Court was filed, Mr. Chadwick filed a petition for rehearing that substantially elaborated on certain points raised in his original brief, and the panel received an answer to the petition pursuant to our Internal Operating Procedure 9.5.2. Both panel rehearing and rehearing en banc have been denied, but the panel believes that it is appropriate to respond to certain points addressed in the petition for rehearing. Rather than issuing a separate opinion sur denial of panel rehearing, this opinion has been amended in order to integrate that discussion into the related discussion in the original opinion.

6. We review de novo the District Court's legal conclusions, including its application of the standards of review imposed by AEDPA. *See Banks v. Horn*, 271 F.3d 527, 531 (3d Cir. 2001). If a District Court has a proper occasion to make findings of fact, they are reviewed for clear error. *See Love v. Morton*, 112 F.3d 131, 133 (3d Cir. 1997).

an unreasonable application of, clearly established Federal Law . . . ." In *Hameen*, we held that the petitioner had properly exhausted the claim that his Eighth Amendment rights had been violated because two of the aggravating circumstances found to support the death penalty were duplicative. 212 F.3d at 246-47. We concluded, however, that the Delaware Supreme Court "did not pass on [the petitioner's] Eighth Amendment constitutional duplicative aggravating circumstances argument, even though it had the opportunity to do so." *Id.* at 248. Accordingly, the *Hameen* panel held that this claim had not been "adjudicated on the merits in State court proceedings" and that the restrictive standard of review in 28 U.S.C. § 2254(d)(1) did not apply. 212 F.3d at 248.

Appel followed *Hameen*, stating that "when, although properly preserved by the defendant, the state court has not reached the merits of a claim thereafter presented to a federal habeas court, the deferential standards provided by AEDPA . . . do not apply." 250 F.3d at 210. The *Appel* panel held that the petitioner had properly presented in the state courts a claim of *the constructive denial of counsel* but that the state courts had misconstrued the claim as one of *the ineffective assistance of counsel*. *Id.* at 210-12. Observing that "[t]he two claims, of course, are different," *id.* at 210, the panel held that the constructive denial claim had not been decided by the state courts and that the restrictive standards of § 2254(d) did not apply. *Id.* at 211.

Finally, the *Everett* court, relying on *Hameen*, 290 F.3d at 508, held that the § 2254(d) standards did not apply because the state courts had not adjudicated the petitioner's properly exhausted claim that his Sixth Amendment right to the effective assistance of counsel had been violated but instead had decided only that his rights under state law had not been abridged. See *id.* at 516.

Hameen, *Appel*, and *Everett* stand for the proposition that, if an examination of the opinions of the state courts shows that they misunderstood the nature of a properly exhausted claim and thus failed to adjudicate that claim on the merits, the deferential standards of review in AEDPA do not apply. *Hameen*, *Appel*, and *Everett* did not deal with

summary dispositions — but *Weeks v. Angelone*, 528 U.S. 225 (2000), did.

In *Weeks*, the petitioner "presented 47 assignments of error in his direct appeal to the Virginia Supreme Court." 528 U.S. at 231. The state supreme court rejected number 44 without explanation. Reviewing this claim, the Fourth Circuit recognized that the AEDPA standards do not apply when a state court has not adjudicated a claim on the merits, *Weeks v. Angelone*, 176 F.3d 249, 258 (4th Cir. 1999), but the Fourth Circuit held that "[w]here, as here, the state supreme court has adjudicated a claim on the merits but has given no indication of how it reached its decision, a federal habeas court must still apply the AEDPA standards of review." *Id.* at 259. Applying those standards, the Fourth Circuit denied the application for a certificate and dismissed the habeas petition.

The United States Supreme Court reviewed the claim set out in assignment of error 44 and affirmed. *See* 528 U.S. at 231. After explaining why there had been no constitutional violation, the Court wrote:

> Because petitioner seeks a federal writ of habeas corpus from a state sentence, we must determine whether 28 U.S.C. § 2254(d) precludes such relief. The Court of Appeals below held that it did. 176 F.3d, at 261. We agree. Section 2254(d) prohibits federal habeas relief on any claim "adjudicated on the merits in State court proceedings," unless that adjudication resulted in a decision that was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. §§ 2254(d) and (1) (1994 ed., Supp. III). For the reasons stated above, it follows a fortiori that the adjudication of the Supreme Court of Virginia affirming petitioner's conviction and sentence neither was "contrary to," nor did it involve an "unreasonable application of," any of our decisions.

528 U.S. at 237. Thus, the Supreme Court clearly held that the § 2254(d) standards apply when a state supreme court rejects a claim without giving any "indication of how it reached its decision." 176 F.3d at 259.

Needless to say, if *Hameen*, *Appel*, and *Everett* conflict with *Weeks*, the former must give way, but we see no such conflict. *Hameen*, *Appel*, and *Everett* govern when the opinion of a state court reveals that it did not adjudicate a claim; *Weeks* applies when a claim is rejected without explanation. In the present case, the Pennsylvania Supreme Court rejected Chadwick's claim on the merits without explanation. *Weeks* is therefore the governing precedent, and § 2254(d) must be applied.

B.

Under 28 U.S.C. § 2254(d), a federal court may grant habeas relief only if the state court's decision was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," *id.* § 2254(d)(1), or was "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," *id.* § 2254(d)(2).[7] Moreover, a state court's factual findings are "presumed to be correct," and the habeas petitioner carries the "burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1).

In *Williams v. Taylor*, 529 U.S. 362, 405-06 (2000), Justice O'Connor wrote in her controlling opinion that a state court ruling is "contrary to" clearly established Supreme Court precedent for the purposes of § 2254(d)(1) "if the state court applies a rule that contradicts the governing law set forth in [the Supreme Court's] cases," or "if the state court confronts a set of facts that are materially indistinguishable from a decision of [the Supreme Court] and nevertheless arrives at a result different from [its] precedent." A state court decision is an "unreasonable application"[8] of Supreme Court precedent if it "identifies the

---

7. The District Court agreed with all of the factual findings of the state courts, stating that "[t]he record below clearly demonstrates that the state court findings were not erroneous. This court is convinced that Mr. Chadwick has the present ability to comply with the July 22, 1994 order." *Chadwick v. Janecka*, No. 00-1130, 2002 U.S. Dist. LEXIS 10, at *19 (E.D.Pa. Jan. 3, 2002). Therefore, no § 2254(d)(2) inquiry is necessary here.

8. It has been argued that a state court may unreasonably apply clearly established Supreme Court precedent by unreasonably refusing to

correct governing legal rule from [the Supreme] Court's cases, but unreasonably applies it to the facts of the particular state prisoner's case." *Williams v. Taylor*, 529 U.S. 362, 407 (2000) (O'Connor, J., concurring) (controlling opinion). When making the "unreasonable application" inquiry, the federal habeas court should ask "whether the state court's application of clearly established federal law was *objectively* unreasonable." *Id.* at 409 (emphasis added); *see also Matteo v. Superintendent, SCI Albion*, 171 F.3d 877, 891 (3d Cir. 1999) (en banc) (stating the test to be "whether the state court decision, evaluated *objectively* and on the merits, resulted in an outcome that cannot reasonably be justified [under existing Supreme Court precedent]") (emphasis added).

In urging this Court to affirm the District Court's decision, Mr. Chadwick argues that the state courts failed to recognize that his confinement has ceased to be coercive and that, as a consequence, he cannot be held in custody any longer unless he is convicted and sentenced for criminal contempt. We disagree and hold that the state courts' decision — denying habeas relief because Mr. Chadwick has the present ability to comply with the court order — was neither contrary to nor an unreasonable application of "clearly established Federal Law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1).

1.

To determine whether a contempt order is civil or criminal, Supreme Court jurisprudence requires an examination of the "character and purpose" of the sanction imposed. *See International Union v. Bagwell*, 512 U.S. 821,

---

extend a legal principle to a new context. *Ramdass v. Angelone*, 530 U.S. 156, 165 (2000); *Williams v. Taylor*, 529 U.S. 362, 408 (2000); *Marshall v. Hendricks*, 307 F.3d 36, 51 n.2 (3d Cir. 2002). For present purposes, we assume the validity of this subset of the concept of unreasonable application. In discussing the concept of unreasonable applications in this opinion, we intend our remarks to refer to all types of unreasonable application, including the unreasonable failure to extend.

827 (1994); *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 441 (1911). Civil confinement "is remedial, and for the benefit of the complainant," *Gompers*, 221 U.S. at 441, whereas criminal confinement "is punitive, to vindicate the authority of the court." *Id.* The *Bagwell* Court identified the "paradigmatic coercive, civil contempt sanction" as

> involv[ing] [the] confin[ement] [of] a contemnor *indefinitely* until he complies with an affirmative command such as an order "to pay alimony, or to surrender property ordered to be turned over to a receiver, or to make a conveyance." 221 U.S. at 442 . . . . In these circumstances, the contemnor is able to purge the contempt and obtain his release by committing an affirmative act, and thus " 'carries the keys of his prison in his own pocket.' " *Gompers*, 221 U.S. at 442.

512 U.S. at 828 (emphasis added) (citations omitted). Conversely, the *Bagwell* Court observed, "a fixed sentence of imprisonment is punitive and criminal if it is imposed retrospectively for a 'completed act of disobedience,' such that the contemnor cannot avoid or abbreviate the confinement through later compliance." *Id.* at 828-29 (citations omitted). Thus, *Bagwell* seems to permit a contemnor who has the ability to comply with the underlying court order to be confined until he or she complies, and if this reading is correct, *Bagwell* directly contradicts the decision of the District Court in the present case.

Mr. Chadwick, however, urges us not to take *Bagwell* at face value. He contends that the phrase "indefinitely until he complies" in *Bagwell* does not mean "permanently and without other recourse." Pet. for Rehearing at 4. Instead, he maintains that "[t]he word 'indefinitely' is apparently used in its most precise sense, to mean 'with no pre-determined ending date' . . . ." Pet. for Rehearing at 4 n.4. We have no quarrel with this definition, but this understanding of the term "indefinitely" does not explain away the critical statement in *Bagwell* that a civil contemnor may be confined "indefinitely *until he complies*." 512 U.S. at 828 (emphasis added).

The meaning of the statement in *Bagwell* that a contemnor may be held "indefinitely until he complies" is perfectly clear. The phrase "until he complies" sets the point in time when confinement must cease. The term "indefinitely" describes the length of confinement up to that point, namely, a period "having no exact limits," WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1147 (1971), because the end point (the time of compliance) cannot be foretold. Mr. Chadwick's contrary interpretation — that "indefinitely until he complies" means "indefinitely until he complies or it becomes apparent that he is never going to comply" — is insupportable. And even if that were a reasonable interpretation, the petition would still lack merit because in order to win it is not enough for Mr. Chadwick to show that his reading is reasonable; he must show that his reading is "clearly established" in Supreme Court precedent. 28 U.S.C. § 2254(d)(1).

In an effort to show that his position is "clearly established" in Supreme Court case law, Mr. Chadwick turns to *Maggio v. Zeitz*, 333 U.S. 56 (1948), which he interprets to mean that a civil contemnor who is able to comply with the underlying court order but simply will not do so must eventually be released. In making this argument, Mr. Chadwick relies almost entirely on two sentences in the *Maggio* opinion, but when that opinion is read in its entirety and with the context of the case in mind, it is apparent that the opinion does not support Mr. Chadwick's position. As we will explain, *Maggio* focuses on the question of *ability* to comply, not *willingness* to comply — and Mr. Chadwick's ability to comply has not been challenged in the present proceeding and is not at issue.

Maggio is a procedurally complicated case,[9] but for

---

9. Maggio was the principal of a bankrupt camera shop. 333 U.S. at 58. The bankruptcy trustee asked the referee to order Maggio to turn over cameras and camera equipment that he had allegedly taken from the business. *Id.*; *In re Luna Camera Services*, 157 F.2d 951, 953 (2d Cir. 1946). To obtain such an order, the trustee was supposed to prove by clear and convincing evidence that Maggio had wrongfully taken the property and still possessed it. *In re Luna Camera Services*, 157 F.2d at 953. However, under Second Circuit precedent, once a wrongful taking

present purposes, it is enough to note that Maggio was the principal of a bankrupt company; that he was jailed for civil contempt for failing to comply with a "turnover order" directing him to return property that he had wrongfully taken from the debtor; and that the Second Circuit affirmed the order of contempt — even though there was no evidence in the record that Maggio still possessed the property and was thus able to return it and even though the Second Circuit panel expressed the view that Maggio clearly did not have the property and could not comply. Central to the Second Circuit's holding was its interpretation of certain statements in *Oriel v. Russell*, 278 U.S. 358 (1929), to mean that Maggio's continued possession of the property had to be viewed as established as a matter of law irrespective of whether he actually still had the property. *See* 333 U.S. at 71.

---

was shown, continued possession at the time when the turnover order was sought was presumed unless the subject of the requested order proved the contrary. *Id.* In Maggio's case, the trustee offered no evidence of Maggio's continued possession, but the referee found that Maggio still possessed the property based solely on the presumption. The trustee thus ordered Maggio to turn over the property, and both the District Court and the Second Circuit affirmed. *See* 333 U.S. at 59. When Maggio failed to comply with this order, the referee found him in contempt, and the District Court affirmed and ordered him jailed until he complied. *Id.*

On appeal, the Second Circuit panel disagreed with Second Circuit precedent under which continued possession was presumed unless disproved. *See* 157 F.2d at 953. The panel expressed the view that the presumption was contrary to common sense in some instances and that Maggio no longer possessed the cameras and equipment. *Id.* at 953.

The panel, however, felt bound by circuit precedent to accept the presumption. The panel noted that the finding in the litigation regarding the turnover order that Maggio still possessed the property at the time of that order (in 1943) was res judicata. 157 F.2d at 954. Furthermore, the panel interpreted the Supreme Court's decision in *Oriel v. Russell*, 278 U.S. 358 (1929), to mean that it was also necessary to accept the fact that Maggio still possessed the property at the time of the order of contempt (in 1945). *See* 157 F.2d at 954. The panel thus affirmed the order of contempt, but it explicitly invited the Supreme Court to grant certiorari and wipe out the objectionable circuit precedent regarding the presumption of continued possession. *See id.* at 955. The Supreme Court obliged.

The Supreme Court reversed the Second Circuit and remanded the case to the District Court for the purpose of receiving evidence and making a finding on the question whether Maggio was able to comply with the turnover order. The entire focus of the opinion was on the issue of ability to comply. In part I of its opinion, the Court held that a turnover order should not be issued unless the person in question has the present ability to comply. 333 U.S. at 61-64.[10] In part II, the Court discussed the ways in which a bankruptcy trustee may prove continued possession and present ability to comply. *Id.* at 64-67. The Court agreed that present possession may sometimes be inferred from past possession, but the Court counseled that close attention should be paid to the particular circumstances of the case. *Id.*

After discussing other aspects of civil contempt law in part III of its opinion,[11] the Court explained in part IV that a bankrupt may not be jailed for refusal to perform "an impossibility." 333 U.S. at 69. The Court disagreed with the Second Circuit that *Oriel* compelled the courts to proceed on the assumption that Maggio continued to possess the property at the time of the order of contempt. The *Maggio* Court noted that *Oriel* had quoted the following statement from a lower court opinion:

> " 'Where [confinement for civil contempt] has failed [to produce compliance], and where a reasonable interval of time has supplied the previous defect in the evidence, and has made sufficiently certain what was doubtful before, namely, *the bankrupt's inability to obey the order*, he has always been released, and I need hardly say that he would always have the right to be released, as soon as the fact becomes clear that *he can not obey*.' "

---

10. Court stated: "The nature and derivation of the remedy make clear that it is appropriate only when the evidence satisfactorily establishes the existence of the property or its proceeds, and possession thereof by the defendant at the time of the proceeding." 333 U.S. at 63-64.

11. The Court reaffirmed that a person held in civil contempt cannot attack the validity of the underlying order with which the person has not complied. 333 U.S. at 67-69.

333 U.S. at 72 (emphasis added) (quoting *Oriel*, 278 U.S. at 366 (quoting *In re Epstein*, 206 F. 568, 570 (E.D. Pa. 1913)). The Court continued that "the authorities relied upon" in *Oriel* made it clear that the "decision did not contemplate that a coercive contempt order should issue when it appears that there is at that time no willful disobedience but *only an incapacity to comply*." *Id.* at 72-73.[12]

Addressing Maggio's situation, the Court concluded that Maggio's possession of the property at the time of the turnover order created a prima facie case of his ability to comply at the time of the civil contempt, and the Court stated that he could "successfully meet" this prima facie case "only with a showing of present inability to comply." *Id.* at 75. The Court continued:

> Of course, if he offers no evidence as to his inability to comply with the turnover order, or stands mute, he does not meet the issue. Nor does he do so by evidence or by his own denials which the court finds incredible in context.

Id. at 76-77. Then, in the passage on which Mr. Chadwick relies, the Court added:

> [T]he bankrupt may be permitted to deny his present possession and to give any evidence of present conditions or intervening events which corroborate him. The credibility of his denial is to be weighed in the light of his present circumstances. *It is everywhere admitted that even if he is committed, he will not be held in jail forever if he does not comply. His denial of*

---

12. In two lengthy footnotes, the *Maggio* Court surveyed the relevant lower court authorities. *Id.* at 73-74 nn. 6 & 7. In footnote six, the Court examined cases involving turnover orders in bankruptcy and stated that "[t]he cumulative effect of these authorities seems clearly to be that, while a bankrupt's denial of present possession, standing alone, may not be sufficient to establish his inability to produce the property or its proceeds, if the court is satisfied, from all the evidence properly before it, that *the bankrupt has not the present ability to comply*, the commitment order should not issue." 333 U.S. at 73 n. 6 (emphasis added). In footnote seven, the Court considered "cases involving contempt orders for failure to pay alimony" and found that these also turned on the same ability-to-comply principle. *Id.* at 74 n. 7.

> *possession is given credit after demonstration that a period in prison does not produce the goods.* The fact that he has been under the shadow of prison gates may be enough, coupled with his denial and the type of evidence mentioned above, to convince the court that his is not a wilful disobedience which will yield to coercion.
>
> The trial court is obliged to weigh not merely the two facts, that a turnover order has issued and that it has not been obeyed, but all the evidence properly before it in the contempt proceeding in determining whether or not there is actually a present ability to comply and whether failure so to do constitutes deliberate defiance which a jail term will break.

333 U.S. at 76 (emphasis added).

Mr. Chadwick's reading of *Maggio* is based principally on the two highlighted sentences in the block quote above. *See* Pet. for Rehearing at 5. Mr. Chadwick interprets these sentences to mean that "[t]he law eventually ceases trying in the civil context to distinguish inability to comply with adamant refusal." Pet. for Rehearing at 5. This reading, however, takes these two sentences out of context. When the statements are read in context, it is apparent that they refer to the inference of an inability to pay that arises after long confinement.

This interpretation is strongly supported by the *Maggio* Court's discussion of *Oriel*, to which we have previously referred. The first of the two sentences in *Maggio* on which Mr. Chadwick relies begins with the words "It is every where admitted . . . ." The sentence is thus restating settled law, not forging new ground, and the settled law is that recounted in *Oriel*, i.e., that a contempt order should not be issued unless there is a present inability to comply. *See* 333 U.S. at 72-74 and nn. 6, 7.

That the sentences in *Maggio* on which Mr. Chadwick relies refer to the inability to comply is also strongly supported by other parts of the opinion to which we have already referred. One example is the Court's statement that a person in Maggio's position could meet the prima facie case of continued possession "only" by showing a present

inability to comply. 333 U.S. at 75. Another example is supplied by the very next sentence after those on which the petition relies. That sentence states that long confinement ("the shadow of prison gates"), together with a denial of possession and corroborating evidence "*may* be enough" to convince a court that the contemnor is not being "willfully disobedient" but simply cannot comply. *Id.* at 76 (emphasis added).

When the two sentences from *Maggio* on which Mr. Chadwick relies are read in context, it is apparent that they refer to the inference that may be drawn under most circumstances when a contemnor, despite long confinement, fails to comply with an order such as a bankruptcy turnover order.[13] After all, the vast majority of people would not remain in jail "forever" rather than obey a court order requiring that the property of a bankrupt estate be turned over. Thus, in most cases, after a certain period, the inference that the contemnor is unable to comply becomes overwhelming. The present case, however, is not the ordinary case. On the contrary, it concerns an individual whom we must assume is fully capable of complying with the state court order but simply will not do so. Neither *Maggio* nor any other Supreme Court case clearly establishes that such a person must be released.

---

13. We note that the Third Circuit opinion on which Mr. Chadwick relies most heavily — *In re Grand Jury Investigation (Appeal of Braun)*, 600 F.2d 420 (3d Cir. 1979)("*Braun*") — interpreted *Maggio* in this way. In *Braun*, a panel of our court accepted the very proposition of law advanced by Mr. Chadwick and accepted by the District Court — that a civil contemnor who is simply unwilling to comply with the court order must be released after the passage of a certain period of time — but the panel did not suggest that *Maggio* required or even supported this holding. Instead, the *Braun* court wrote:

> Since it is impossible to succeed in coercing that which is beyond a person's power to perform, continued incarceration for civil contempt "depends upon the ability of the contemnor to comply with the court's order. *Maggio v. Zeitz*, 333 U.S. 56, 76, 68 S.Ct. 401, 411, 92 L.Ed. 476 (1948)."

600 F.2d at 423 (quoting *Shillitani v. United States*, 384 U.S. 364, 371 (1966)). This understanding of *Maggio*, which contrasts sharply with Mr. Chadwick's, is correct.

2.

In this case, the District Court properly proceeded on the assumption that Mr. Chadwick has the present ability to comply with the July 1994 state court order. The state courts have repeatedly so found. Under 28 U.S.C. § 2254(e)(1), the District Court was bound by these state court factual determinations, absent rebuttal of the presumption of correctness by clear and convincing evidence. The District Court acknowledged that the record demonstrates that the state court findings were not erroneous, and the District Court stated that it was "convinced that [Mr.] Chadwick has the present ability to comply with the July 22, 1994 order." *Chadwick v. Janecka*, No. 00-1130, 2002 U.S. Dist. LEXIS 10, at *19 (E.D.Pa. Jan. 3, 2002).

Presuming these state court factual findings to be correct, the District Court nevertheless concluded that Mr. Chadwick's confinement had become punitive and that therefore the state court decision was an unreasonable application of federal law. Although the District Court alluded to the Supreme Court's decisions in *Bagwell* and *Gompers*, the District Court relied chiefly on this Court's decision in *In re Grand Jury Investigation (Appeal of Braun)*, 600 F.2d 420 (3d Cir. 1979)("*Braun*"), in concluding that the passage of time may alter the nature of a contemnor's confinement, transforming it from coercive to punitive and requiring observance of the procedural rights associated with criminal contempt. With this principle in mind, the District Court concluded that because Mr. Chadwick had defied the court's order for so long, there was "no substantial likelihood" that he would comply in the future and that therefore the order had lost its coercive effect.

In *Braun*, we upheld a contemnor's confinement for refusing to testify before a federal grand jury. *Id.* at 428. The contemnor argued that his confinement was not coercive but punitive, because "there was no substantial likelihood that he would testify before the grand jury." *Id.* at 422. Recognizing that some courts had applied the "no substantial likelihood of compliance" standard, we noted that the contemnor had been confined under a federal statute that limited confinement to 18 months for refusing

to testify before a grand jury. *Id.* at 423-24. We held that, absent unusual circumstances, 18 months was not an unreasonable length for confinement in this context, and declined to inquire whether, in fact, there was no substantial likelihood that the contemnor would comply with the order to testify. *Id.* at 427.

Under 28 U.S.C. § 2254(d), the District Court's holding — that Mr. Chadwick can no longer be held in custody for civil contempt because there is "no substantial likelihood" that he will comply with the order — is erroneous. The District Court incorrectly relied on dicta in one of our opinions, but AEDPA is clear that the appropriate law to apply is Supreme Court precedent. *See* 28 U.S.C. § 2254(d)(1) (referring to "clearly established Federal law, as determined by the Supreme Court of the United States"); *see also Williams*, 529 U.S. at 412 ("§ 2254(d)(1) restricts the source of clearly established law to [the Supreme] Court's jurisprudence").

It is true that "federal habeas courts are [not] precluded from considering the decisions of the inferior federal courts when evaluating whether the state court's application of the law was reasonable." *Matteo*, 171 F.3d at 890. But this Court has clearly stated that decisions by lower federal courts may be considered only "as helpful amplifications of Supreme Court precedent." *Id.* It is revealing to us that in *Braun* this Court characterized the "no substantial likelihood" test as an "*additional constraint* upon the civil contempt power" beyond that recognized in decisions by the United States Supreme Court. *Braun*, 600 F.2d at 423 (emphasis added). As we noted in *Matteo*, 171 F.3d at 890, however, "federal courts may not grant habeas corpus relief based on the state court's failure to adhere to the precedent of a lower federal court on an issue that the Supreme Court has not addressed."

The Supreme Court has never endorsed the proposition that confinement for civil contempt must cease when there is "no substantial likelihood of compliance." On the contrary, in words that might as well have been written to describe the case now before us, the *Bagwell* Court stated that "[t]he paradigmatic coercive, civil contempt sanction . . . involves confining a contemnor *indefinitely* until he

complies with an affirmative command such as an order 'to pay alimony, or to surrender property ordered to be turned over to a receiver . . . .'" *Bagwell*, 512 U.S. at 828 (emphasis added) (citation omitted). We have no need here to decide whether *In re Grand Jury Investigation* remains good law in light of *Bagwell*. It is enough for present purposes that the state court decisions cannot be disturbed under the restricted standard of review applicable in this habeas case.

V.

Because the state courts have repeatedly found that Mr. Chadwick has the present ability to comply with the July 1994 state court order, we cannot disturb the state courts' decision that there is no federal constitutional bar to Mr. Chadwick's indefinite confinement for civil contempt so long as he retains the ability to comply with the order requiring him to pay over the money at issue. Accordingly, the District Court erred in holding that the state courts' decisions were an unreasonable application of Supreme Court precedent. We, therefore, reverse the order of the District Court granting Mr. Chadwick's petition.

Our decision does not preclude Mr. Chadwick from filing a new federal habeas petition if he claims that he is *unable* for some reason to comply with the state court's order. And, needless to say, our decision imposes no restrictions on the state courts' ability to grant relief.[14]

A True Copy:
Teste:

Clerk of the UnitedStates Court of Appeals
for the Third Circuit

---

14. We do not agree with Mr. Chadwick's argument that despite our reversal of the District Court's order, the respondents in the District Court must still release Mr. Chadwick because they did not appeal. Because of our judgment, the District Court's order granting the writ no longer has any operative effect and thus cannot command his release.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

H. BEATTY CHADWICK	:	CIVIL ACTION
v.	:	
JAMES JANECKA	:	NO. 00-1130

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J. **January 3, 2002**

Petitioner H. Beatty Chadwick, Esq.[1] ("Chadwick"), filing a petition for writ of habeas corpus under 28 U.S.C. § 2254, challenges his continued incarceration for civil contempt. In his petition, Chadwick argues that his imprisonment is impermissibly punitive and he has been denied due process because: (1) he was and is unable to comply with a state court order of which he has been adjudged contemptuous; (2) he was denied a jury trial and other procedural rights; (3) he was imprisoned after a summary proceeding; (4) his imprisonment has become punitive; (5) he was imprisoned for failure to pay money; (6) his civil imprisonment is indefinite; (7) the imprisonment order is facially unlawful; (8) the state court ordering the incarceration lacked jurisdiction; and (9) he was denied a prompt appeal.

United States Magistrate Judge Arnold C. Rapoport issued a Report and Recommendation ("R & R") to deny and dismiss the petition without an evidentiary hearing and find no probable cause to issue a certificate of appealability.

---

[1] Chadwick is an inactive member of the Pennsylvania Bar.

Petitioner filed objections and Barbara Jean Crowther Chadwick ("Ms. Chadwick"), petitioner's estranged wife and the Intervenor in this action, filed a motion to dismiss Chadwick's petition. For the reasons stated herein, the motion to dismiss will be denied and after *de novo* consideration of Chadwick's petition, the petition for writ of habeas corpus will be granted.

BACKGROUND

Ms. Chadwick filed a divorce action in the Delaware County Court of Common Pleas in November, 1992. During an equitable distribution conference in February, 1993, Chadwick informed the state court and Ms. Chadwick he had transferred $2,502,000 of the marital estate to satisfy an alleged debt to Maison Blanche, Ltd. ("Maison Blanche"), a Gibraltar partnership. *See Chadwick v. Chadwick,* No. 1555 Philadelphia 1995 at 2 (Pa. Super. Ct. Aug. 22, 1996) ("*Chadwick I*"). Ms. Chadwick had no knowledge of any debt owed by Chadwick to Maison Blanche.

After hiring a private investigator and further discovery, Ms. Chadwick determined: (1) one of the principals of Maison Blanche returned $869,106.00 from Gibraltar to an American bank account in Chadwick's name, and the funds were used to purchase three annuity contracts; (2) $995,726.41 had been transferred to a Union Bank account in Switzerland in Chadwick's name; and (3) $550,000.00 in stock certificates Chadwick claimed he had transferred to an unknown barrister in England to forward to Maison Blanche were never received. *Id.* at 3; *Chadwick v. Hill,* No. 2192 Philadelphia 1996 at 2 n.1 (Pa. Super. Ct. Apr. 23, 1997) ("*Chadwick II*"). The state court

entered a freeze order on the marital assets on April 29, 1994.

In May, 1994, Chadwick redeemed the annuity contracts and deposited the funds in a Panamanian bank. *See Chadwick II,* at 2 n.1. On July 22, 1994, the state court held a hearing at which Chadwick and his counsel were present. After hearing testimony regarding disposition of the $2,502,000.00 sent to Gibraltar, the court determined Chadwick's transfer of the money was an attempt to defraud Ms. Chadwick and the court. On the day of the hearing, the court ordered Chadwick to return the $2,502,000.00 to an account under the jurisdiction of the court, pay $75,000.00 for Ms. Chadwick's attorney's fees and costs, surrender his passport and remain within the jurisdiction. *See id.* at 3.

Chadwick refused to comply with the July 22, 1994 order; Ms. Chadwick filed a petition for contempt. The state court held contempt hearings on August 29, 1994, October 18, 1994, and October 31, 1994. Chadwick failed to appear at any of the hearings, but his attorney was present. *See id.* The state court found Chadwick in contempt of the July 22, 1994 order and issued a bench warrant for his arrest.

Chadwick, learning a bench warrant had been issued, fled the jurisdiction but was arrested and detained on April 5, 1995. The state court then determined Chadwick had the present ability to comply with the terms of the July 22, 1994 order and set bail at $3,000,000.00. *See Chadwick I,* at 4. Chadwick could have been released from custody at any time either by posting bail or purging his contempt by compliance with the July 22, 1994 order to

deposit $2,502,000.00 in the court's account; to date, he has done neither.

On April 7, 1995, Chadwick filed in federal court an emergency motion to quash the state court bench warrant and release him from Delaware County Prison because the contempt finding was improper under state law. This court declined to intervene in a pending state court proceeding under *Younger v. Harris,* 401 U.S. 37 (1971) and progeny. *See Chadwick v. Delaware County Court of Common Pleas,* No. 95-0103, 1995 WL 232500, at *2 (E.D. Pa. Apr. 19, 1995).

Chadwick has filed six state petitions for habeas relief; the trial court denied them all. He appealed one denial and his latest denial was subject to appeal, but before the appeals were decided, Chadwick filed a second federal habeas petition; this court dismissed the second federal habeas petition for failure to exhaust available state remedies because the issues had not yet been presented to the Pennsylvania Supreme Court. *See Chadwick v. Hill,* No. 95-0103, 1995 WL 541794, at *1 (E.D. Pa. Sept. 8, 1995).

Several appeals of state trial court denials of his habeas petitions and a motion to vacate state court orders were consolidated on appeal. The Pennsylvania Superior Court, affirming the lower court decisions in August, 1996, found that he was able to comply with the July, 1994 Order. *See Chadwick I.* The Superior Court held that: (1) the trial court had jurisdiction to find Chadwick in contempt; (2) the procedure used by the trial court in the contempt proceedings was not improper; (3) the trial court did not err in adjudicating Chadwick in contempt; (4) state statutory provisions governing criminal contempt were

inapplicable; (5) Chadwick was not illegally incarcerated; and (6) Chadwick's incarceration had not ceased to be coercive in nature. *Id.* Chadwick's petition for allowance of appeal to the Supreme Court of Pennsylvania was denied on April 8, 1997.

Chadwick's sixth petition for state habeas relief argued that his continued confinement deprived him of due process because it had become punitive rather than coercive; it was denied by the trial court on June 21, 1996. While appealing that determination, Chadwick filed a third federal habeas petition on September 23, 1996. By Memorandum and Order dated January 16, 1997, this court dismissed Chadwick's third federal habeas petition for failure to exhaust available state remedies and abstained because of the pending appeal to the Superior Court. *See Chadwick v. Hill,* No. 96-6426, 1997 WL 22406, at *2 (E.D. Pa. Jan. 16, 1997).

The Pennsylvania Superior Court affirmed the trial court's denial of Chadwick's sixth state habeas petition by Opinion dated April 23, 1997. *See Chadwick II.* The court encouraged the Supreme Court of Pennsylvania to review its decision to clarify the point at which a coercive penalty for civil contempt becomes a criminal sanction requiring due process under federal and state law. *See id.* at 6 (it "is for our high court to make such a determination.").

Chadwick did not seek review by the Pennsylvania Supreme Court, but instead sought reconsideration of this court's January 16, 1997 decision dismissing his federal habeas petition for non-exhaustion of state remedies. This court, finding the Superior Court specifically "invited" the Pennsylvania Supreme Court to review its decision and that Chadwick had not yet presented his due process

claims to the Supreme Court for review, denied Chadwick's motion for reconsideration on May 23, 1997. The court held that "the question of when civil contempt becomes punitive is one which a federal court should abstain from considering before the state supreme court has had the opportunity." May 23, 1997 Order at ¶ 10.

Chadwick declined to seek Supreme Court review of the Superior Court's April 23, 1997 decision. Instead, Chadwick filed his fourth federal habeas petition on July 18, 1997. He argued his continued detention in the Delaware County Prison served only a punitive purpose so that he was no longer imprisoned for civil contempt and must be afforded the protections and procedures obligatory for criminal sanctions. That petition was dismissed for failure to exhaust available state remedies on April 30, 1998. *See Chadwick v. Andrews,* No. 97-4680, 1998 WL 218026 (E.D. Pa. Apr. 30, 1998).

In September, 1999, Chadwick, filing a *pro se* Application for Leave to File Original Process (his seventh state habeas petition) with the Supreme Court of Pennsylvania, asserted, *inter alia,* that he had been denied due process of law and his continued incarceration had ceased to be coercive but was punitive. This request was granted on February 8, 2000; the petition for habeas corpus was summarily denied on the same date. Chadwick had also filed a petition for release in the Delaware Court of Common Pleas on the ground that he was suffering from "major psychological depression," and unable to participate in his divorce proceedings. After a hearing, on September 22, 1999, the state court trial judge was "convinced that Mr. Chadwick is feigning mental illness in an effort to be released from prison without returning the $2,500,000 which he transferred out of this country." *Chadwick v.*

Chadwick, No. 92-19535, slip op. at 4 (Ct. Com. Pl., Del. Cty., Pa. Sept. 22, 1999).

On March 2, 2000, Chadwick filed this, his fifth federal habeas petition. On December 8, 2000, Judge Rapoport issued an R & R to which Chadwick filed timely objections.

On April 4, 2001, Chadwick filed his eighth state court habeas petition. A hearing on the petition was held on April 11, 2001, at the conclusion of which the petition was dismissed. Because Chadwick may now appeal that dismissal, on April 18, 2000, Ms. Chadwick filed a motion to dismiss Chadwick's fifth federal habeas petition for failure to exhaust state court remedies.

A hearing was held on April 20, 2001, at which both Chadwick and Ms. Chadwick were heard on Chadwick's fifth federal habeas petition and Ms. Chadwick's motion to dismiss. For the reasons set forth herein, the Intervenor's motion to dismiss will be denied and the petition for habeas corpus will be granted.

DISCUSSION

I. Motion to Dismiss

"An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State. . . . " 28 U.S.C.A. § 2254(b)(1)(A) (West 1994 & Supp. 2001). *See also Duckworth v. Serrano,* 454 U.S. 1, 3 (1981); *Roberts v. LaVallee,* 389 U.S. 40, 42 (1967); *Codispoti v. Howard,* 589 F.2d 135, 140 (3d Cir. 1978). The exhaustion requirement is not met if the

petitioner "has the right under the law of the State to raise, by any available procedure, the question presented." 28 U.S.C.A. § 2254(c) (West 1994 & Supp. 2001). The exhaustion requirement has been met when the petitioner has presented his claims to the highest state court; there is no requirement that the state courts consider or discuss the claims. *See Swanger v. Zimmerman,* 750 F.2d 291, 295 (3d Cir. 1984).

A petitioner need only seek state court review of a federal claim once, either on direct review or in a state habeas proceeding; repeated review is not necessary to satisfy the exhaustion requirement. *See Duckworth v. Serrano,* 454 U.S. 1, 4 n.1 (1981) ("repetitious applications to state courts" not required); *Codispoti v. Howard,* 589 F.2d 135, 142 (3d Cir. 1978) (same).

Chadwick's seventh state habeas petition, a direct appeal to the Supreme Court of Pennsylvania, presented the following issues: (1) Chadwick's imprisonment for failure to comply with a court order was contrary to due process because he was unable to comply with the order; (2) Chadwick was incarcerated without a jury trial or the presumption of innocence, contrary to due process; (3) the summary nature of the contempt proceedings deprived Chadwick of due process; (4) the order of imprisonment was facially invalid because it failed to specify a condition upon the fulfillment of which Chadwick's imprisonment would terminate; (5) the denial of Chadwick's right to appeal the adjudication of contempt and sanction of imprisonment violated his due process rights; (6) imprisonment for the nonpayment of money was a deprivation of due process; (7) civil confinement in excess of 50 months is a deprivation of due process; (8) imprisonment for violation of a court order issued without jurisdiction was a

deprivation of due process; and (9) Chadwick's imprisonment was and still is punitive rather than coercive. These are the same issues raised in the petition presently before this court. Because the issues have now been presented to the highest state court, they have been exhausted. *See Swanger,* 750 F.2d at 295 ("[t]he exhaustion requirement . . . has been judicially interpreted to mean that claims must have been presented to the state courts; they need not have been considered or discussed by those courts."). Intervenor's motion to dismiss for failure to exhaust available state remedies will be denied.

II. Chadwick's *Habeas Corpus* Petition

A. Standard of Review

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2254, requires a federal court considering a habeas petition to afford state court determinations great deference. Habeas petitions filed since the enactment of AEDPA require a two-step analysis. *Matteo v. Superintendent, SCI Albion,* 171 F.3d 877, 891 (3d Cir. 1999) (en banc), *cert. denied, Matteo v. Brennan,* 528 U.S. 824 (1999). First, the federal court must determine whether the state court's decision was contrary to Supreme Court precedent. *Id.* Second, if the state court's decision was not contrary to Supreme Court precedent, the court must determine whether the state court decision represents an unreasonable application of Supreme Court precedent. *Id.*

B. Chadwick's Continued Imprisonment Represents an Unreasonable Application of Supreme Court Precedent: It Has Lost Its Coercive Effect and Is Now Impermissibly Punitive

Magistrate Judge Rapoport was of the opinion that Chadwick's imprisonment (now eighty months in duration) is still not impermissibly punitive. R & R at 31. Chadwick, objecting, argues that Judge Rapoport should have relied on *In re Grand Jury Investigation,* 600 F.2d 420 (3d Cir. 1979) (civil contempt is only permissible as long as it has coercive effect).

1. *Civil vs. Criminal Contempt*

Imprisonment until the incarcerated party performs a required act he or she has refused to perform is civil in nature; imprisonment for a definite term as punishment for doing a forbidden act is criminal in nature. *Gompers v. Buck's Stove & Range Co.,* 221 U.S. 418, 443 (1911) (reversing contempt sanctions of incarceration ranging from six to twelve months for violating an injunction; criminal sanctions could not be imposed in a civil proceeding). *See also International Union, United Mine Workers v. Bagwell,* 512 U.S. 821, 826-27 (1984).

> Civil confinement
>
> > is ordered where the defendant has refused to do an affirmative act required by the provisions of an order which, in either form or substance, was mandatory in its character. Imprisonment in such cases is not inflicted as a punishment, but is intended to be remedial by coercing the defendant to do what he refused to do. The decree in such cases is that the defendant stand committed

> unless or until he performs his affirmative act required by the court's order.

Gompers, 221 U.S. at 442. *See also Bagwell,* 512 U.S. at 827. Civil contempt sanctions can become punitive over time, if the coercive force has been lost. *See In re Grand Jury Investigation,* 600 F.2d at 423.

Chadwick's argument is that the length of his imprisonment has transformed the Delaware County Court's contempt sanction from coercive to punitive; the six and a half years he has spent in prison belie the assertion that continued incarceration will coerce him to comply with the court's order. The state courts, presented with this argument, have disagreed.

Judge Rapoport, relying on dicta in *Bagwell,* also disagreed. In *Bagwell,* contempt fines totaling over $64 million were levied against a mine workers' union for violation of an injunction. The Court determined this sanction was criminal in nature because the fines were meant to be punitive and vindicate the court's authority. *Bagwell,* 512 U.S. at 828, 838.

To illustrate the punitive nature of the sanction imposed on the union, the *Bagwell* Court contrasted it with the "paradigmatic" civil contempt sanction: incarceration of a contemnor indefinitely until affirmative compliance with a court order to pay alimony or surrender property. *Id.* at 828. The contempt sanction imposed on Chadwick is such a "paradigmatic" sanction for civil contempt. Chadwick's incarceration was imposed to coerce his compliance with a court order to deposit marital funds with the court. The duration of his confinement has been entirely in Chadwick's hands; complying with the court

order is the key to the jailhouse door. *See Gompers,* 221 U.S. at 442; *Bagwell,* 512 U.S. at 844.

Chadwick argues that even if his incarceration were initially civil in nature, it has since become punitive. He relies on *In re Grand Jury Investigation,* where a prisoner, brought before a grand jury, refused to testify. For this refusal, he was held in civil contempt. The presiding judge ordered him confined until he agreed to testify; the duration of his imprisonment was not to exceed the term of the grand jury or eighteen months. The sentence under which he had been incarcerated was suspended during that period. The contemnor, seeking release from civil confinement after only three months, argued there was no substantial likelihood he would ever testify before the grand jury; his request for an evidentiary hearing to prove this was denied.

On appeal, the court explained that "[s]ince it is impossible to succeed in coercing that which is beyond a person's power to perform, continued incarceration for civil contempt 'depends upon the ability of the contemnor to comply with the court's order.'" *In re Grand Jury Investigation,* 600 F.2d at 423 (quoting *Maggio v. Zeitz,* 333 U.S. 56, 76 (1948)). Confinement for coercive purposes becomes punitive once the coercive force is lost. *Id.*

The court held that the defiant witness' history of silence was insufficient to show that the sanction had lost its coercive force; there was still a chance he would change his mind and decide to testify before the grand jury. *Id.* at 428. "[T]he civil contempt power would be completely eviscerated were a defiant witness able to secure his release merely by boldly asserting that he will never comply with the court's order." *Id.* at 425. His three

months of confinement had not lost its coercive force and become punitive in nature. The court did not terminate his confinement.

The maximum amount of time the defiant witness in *In re Grand Jury Investigation* would have had to spend incarcerated for his civil contempt was only eighteen months; there was a certain end to the sanction imposed. Chadwick's incarceration is indefinite in duration. The difficulty lies in the determination when coercive imprisonment actually ceases to be coercive and becomes punitive; no clear line exists. The Supreme Court of Pennsylvania has declined to rule on this issue and the United States Supreme Court has not pronounced an exact measure.

The duration of Chadwick's incarceration has always been up to him; compliance with the state court order would guarantee his release. Chadwick disagrees; he argues: (1) he does not have the present ability to comply, so his incarceration is indefinite; and (2) even if he did have the ability to comply, the six years and four months he has spent in prison for his failure to comply strongly suggests that further incarceration will have no coercive effect. Chadwick contends the line between coercive and punitive imprisonment has been crossed.

State courts have repeatedly found that Chadwick has the present ability to comply with the order to remit marital assets to a court escrow account for equitable distribution.[2] Under AEDPA, this court is bound by those

---

[2] Judge Joseph Battle had found on at least three occasions that Chadwick had the present ability to comply. *See Chadwick v. Chadwick,*

(Continued on following page)

determinations absent rebuttal of the presumption of correctness of state court findings by clear and convincing evidence. *See* 28 U.S.C.A. § 2254(e)(1) (West 1994 & Supp. 2001).[3] The record below clearly demonstrates that the state court findings were not erroneous.[4] This court is

---

No. 92-19535, slip op. at 4, 5 (Ct. Com. Pl., Del. Cty., Pa. Sept. 22, 1999) (Chadwick feigning mental illness in effort to be released without remitting the marital funds; his refusal to sign authorizations to allow third parties to trace the funds establishes he still has control over them); *Chadwick v. Hill,* No. 96-6154, slip op. at 3 (Ct. Com. Pl., Del. Cty., Pa. June 21, 1996) ("As stated in two previous opinions . . . , this court has found [Chadwick's] testimony, that he did not have control of the disputed funds or knowledge of the whereabouts of the disputed funds, to be incredible;" he could comply and may still comply); *Chadwick v. Hill,* No. 95-80202, slip op. at 8 (Ct. Com. Pl., Del. Cty., Pa., Sept. 20, 1995) ("It is abundantly clear that [Chadwick] still has control over the disputed marital funds and certainly has the ability to comply with [the] July 22, 1994 order.").

The Superior Court has also found that Chadwick has the ability to comply. *See Chadwick v. Hill,* No. 96-19535, slip op. at 6 (Pa. Super. Ct. Apr. 23, 1997) ("After careful review, we would agree that the record supports the trial court's conclusion that [Chadwick] not only has the present ability to comply but also that there is a realistic possibility that he will comply with the order."); *Chadwick v. Chadwick,* Nos. 95-1555, 95-3612, 95-3773, 96-963, slip op. at 12 (Pa. Super. Ct. Aug. 22, 1996) ("Because [Chadwick] clearly holds the keys to the jailhouse door, we find that the sanctions imposed on him have not lost their coercive effect.").

[3] This subsection of the AEDPA states: "In a proceeding instituted by a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C.A. § 2254(e)(1).

[4] As recently as April 11, 2001, Judge Kenneth A. Clouse suggested a compromise: former President Judge Francis J. Catania would be appointed as Chadwick's guardian to trace the assets at issue. Chadwick would cooperate with former Judge Catania by providing him with all information and materials necessary to effectuate the search.

(Continued on following page)

convinced that Chadwick has the present ability to comply with the July 22, 1994 order.

After what is now nearly seven years' incarceration for failure to comply, there is a serious question whether confinement is still serving a coercive purpose. After this significant period of time, there exists more than Chadwick's mere assertion that further confinement will not coerce compliance. *See In re Grand Jury Investigation,* 600 F.2d at 425. The state courts have repeatedly determined that Chadwick's incarceration has not lost its coercive force.[5] This court must determine whether that

---

Once former Judge Catania certified that Chadwick had cooperated and he had all the information necessary to conclude the investigation, Chadwick would be released. Chadwick refused this compromise; he would not agree unless his release were contingent only upon his delivering the requested documents to former Judge Catania. *See Chadwick v. Chadwick,* No. 92-19535, April 11, 2001 Hearing, Tr. at 4, 8.

Twice in August, 1995, Chadwick declined to provide authorization to allow third parties to investigate his assets or to allow the IRS to release his 1993 tax return. *See Chadwick v. Hill,* No. 95-80160, August 17, 1995 Hearing, Tr. at 74; *Chadwick v. Hill,* No. 95-80160, August 8, 1995 Hearing, Tr. at 22-23.

Chadwick's refusals to allow investigation of the funds without his release from custody suggests that he is concerned the assets will be found; if he is released upon signing authorizations, he could locate and secrete the assets, prevent them from being found and remitted to the court. He prefers to remain incarcerated rather than allow his former wife to receive an equitable allotment of the marital assets. This suggests that Chadwick will continue to do all in his power to keep that money hidden and beyond the jurisdiction of the Delaware County Court.

[5] After Chadwick had been incarcerated for five months, Judge Joseph Battle held that the contempt sanction imposed was civil in nature; Chadwick was jailed for failure to pay a debt. *See Chadwick v. Hill,* No. 95-80202, slip op. At 9 (Ct. Com. Pl., Del. Cty., Pa. Sept. 20,

(Continued on following page)

conclusion is contrary to Supreme Court precedent, and if not, whether it is an unreasonable application of Supreme Court precedent.

If, as Chadwick contends, the confinement has lost its coercive force, it has become punitive. *See In re Grand Jury Investigation,* 600 F.2d at 423-24. The burden is on Chadwick to show that there is no "substantial likelihood" that compliance will be the result of continued incarceration. *Id.* at 425. His obstinacy during more than six and half years of imprisonment is persuasive that Chadwick will never voluntarily deposit the disputed funds with the court; it seems clear he is willing to remain incarcerated for life rather than allow his ex-wife access to a share of the funds.

The state court conclusions on this issue on at least five occasions, from five months after his confinement until the Pennsylvania Supreme Court's summary denial

---

1995). Nine months later, Judge Battle held that "the coercive sanctions imposed may yet cause [Chadwick] to ultimately comply with [the] July 22, 1994 order and therefore, [Chadwick's] contempt is not punitive in nature. . . . " *Chadwick v. Hill,* No. 96-6154, slip op. At 5 (Ct. Com. Pl., Del. Cty., Pa. June 21, 1996). Two months after that, the Superior Court found that "the sanctions imposed on [Chadwick] have not lost their coercive effect." *Chadwick v. Chadwick,* Nos. 95-1555, 95-3612, 95-3773, 96-963, slip op. At 12 (Pa. Super. Ct. Aug. 22, 1996). After Chadwick had been incarcerated for over two years, the Superior Court still found the contempt was coercive in nature, holding that "there is a realistic possibility that [Chadwick] will comply with the order." *Chadwick v. Hill,* No. 96-19535, slip op. at 6 (Pa. Super. Ct. Apr. 23, 1997). The Pennsylvania Supreme Court's summary denial of Chadwick's petition for writ of habeas corpus after Chadwick had been incarcerated for almost five years implies that it, too, considered the imprisonment still coercive in nature. *See Chadwick v. Goldberg,* No. 99-223, Order (Pa. Feb. 9, 2000).

after he had been imprisoned for almost five years, were not contrary to Supreme Court precedent; no bright line rule exists for making such a determination. The Pennsylvania Supreme Court's summary denial in February, 2000, implies its conclusion that the confinement had not then crossed the line from coercive to punitive, but without an explanation of the denial, this court does not know why.

Now, after nearly seven years, it is no longer reasonable to conclude Chadwick's continued confinement might still result in compliance with the July 22, 1994 order. Chadwick's continued incarceration cannot be rationalized under *Gompers* or *Bagwell* in light of Chadwick's clear and convincing proof there is no "substantial likelihood" that his remaining in custody will result in his compliance; his confinement, no longer coercive, is an unreasonable application of Supreme Court precedent.

2. *Due Process*

The protracted duration of his incarceration could not have been foreseen by the state court when civil confinement was imposed. The state contempt proceedings were adequate for the imposition of a civil sanction to coerce compliance. However, after such an extensive time period, Chadwick cannot remain incarcerated without the due process attendant to imposition of criminal sanctions.[6] As the Supreme Court recently held,

---

[6] The full panoply of procedural protections attendant to an allegation of criminal conduct apply. An alleged criminal contemnor is entitled to counsel and proof of contempt beyond a reasonable doubt; if the sanction involves more than six months' incarceration, the alleged

(Continued on following page)

> The Fifth Amendment's Due Process Clause forbids the Government to 'deprive' any 'person . . . of . . . liberty . . . without due process of law.' Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects. And . . . government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances, where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint.

See Zadvydas v. Davis, 121 S.Ct. 2491, 2498-99 (2001) (holding an alien may be held pending deportation by the Immigration and Naturalization Service under 8 U.S.C. § 1231 for up to six months, but not indefinitely, without the due process of law afforded in a criminal proceeding) (internal citations omitted). There is no such special justification in this case. Nothing excuses Chadwick's continued defiance of a court order, but his incarceration has crossed the line from coercive to punitive and Constitutional requirements of due process compel his release.

Although Chadwick may not remain incarcerated without due process, his intractability should not be permitted to thwart the authority of a valid court order. The Delaware County Court is not without the power to

---

contemnor has the right to trial by jury. *See Bagwell,* 512 U.S. at 826-27, 834.

institute criminal proceedings against Chadwick (such as a perjury or criminal contempt prosecution). *See In re Grand Jury Investigation,* 600 F.2d at 425.

II. Remaining Grounds For *Habeas* Relief

The court agrees with the remainder of the R & R that Chadwick was not denied due process for any of the reasons alleged and that the state law-based claims are not subject to federal habeas review; he is not entitled to habeas relief on any of the other grounds asserted in his petition.

CONCLUSION

Intervenor's motion to dismiss for failure to exhaust available state remedies is denied. Chadwick has previously presented his current claims to the Supreme Court of Pennsylvania; the fact that he can now appeal the state court's most recent April 11, 2001 denial of his eighth state habeas petition is not an impediment to federal habeas review.

For eighty months, Chadwick has refused to comply with a valid state court order to deposit $2,500,000.00 in marital assets with the court; this renders unreasonable the belief that continued incarceration will have a coercive effect. Chadwick has the present ability to comply, but the duration of his imprisonment has crossed the line from coercive to punitive, and requires his release. Chadwick

should be afforded due process in any proceeding to impose additional criminal sanctions.

An appropriate Order follows.[7]

[7] The government does not need a certificate under 28 U.S.C. § 2253(c)(1) to appeal this decision. *United States ex rel. Tillery v. Cavell,* 294 F.2d 12, 15 (3d Cir. 1961) ("The requirement that a certificate issue before an appeal could be taken was plainly a device to reduce appeals from decisions in favor of states or their officers not their appeals from decisions against them.") The rationale of *Tillery* applies equally to Ms. Chadwick as Intervenor: since petitioner prevails, the court need not issue a § 2253(c)(1) certificate before Ms. Chadwick may take an appeal.

APPENDIX C

IN THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT

H. BEATTY CHADWICK,	:	No. 223
Petitioner	:	M.D. Misc. Dkt. 1999
	:	
v.	:	
IRWIN GOLDBERG, WARDEN,	:	
	:	
Respondent	:	

ORDER

PER CURIAM:

AND NOW, this 8th day of February, 2000, the request for leave to file original process and the request to file an answer are granted and the Petition for Writ of Habeas Corpus is denied.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

02-1173

H. BEATTY CHADWICK

v.

JAMES JANECKA, WARDEN, DELAWARE COUNTY PRISON; THE DISTRICT ATTORNEY OF COUNTY OF DELAWARE; THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA

v.

BARBARA JEAN CROWTHER CHADWICK,
(Intervenor in District Court)

BARBARA JEAN CROWTHER CHADWICK,
Appellant

SUR PETITION FOR REHEARING

Present: BECKER, Chief Judge, SLOVITER, SCIRICA, NYGAARD, ALITO, ROTH, McKEE, BARRY, AMBRO, and FUENTES, Circuit Judges, and WALLACE, Senior Circuit Judge*

The petition for rehearing filed by appellants in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the

---

* As to panel rehearing only.

other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied. Chief Judge Becker would have granted rehearing.

By the Court,

/s/ Samuel Alito
Circuit Judge

DATED: DEC 4 2002

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-1173

H. BEATTY CHADWICK

v.

JAMES JANECKA, WARDEN, DELAWARE COUNTY PRISON; THE DISTRICT ATTORNEY OF COUNTY OF DELAWARE; THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA

v.

BARBARA JEAN CROWTHER CHADWICK,
(Intervenor in District Court)

BARBARA JEAN CROWTHER CHADWICK,
Appellant

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

District Court Judge: Honorable Norma L. Shapiro
(D.C. No. 00-cv-01130)

Argued: May 24, 2002

Before: ALITO, MCKEE, WALLACE, Circuit Judges*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued on May 24, 2002. On consideration whereof, it is now here ORDERED and ADJUDGED by this court that the Judgment of the District Court entered on January 4, 2002, be and the same is hereby, REVERSED. Costs taxed against appellee. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/

Acting Clerk

Dated: August 20, 2002

---

* The Honorable J. Clifford Wallace, Senior Judge of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

APPENDIX F

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL ACTION – LAW

BARBARA CROWTHER CHADWICK,	)	
Plaintiff,	)	**No. 92-19535**
	)	**In Divorce**
v.	)	
	)	**Attorneys Nos.**
H. BEATTY CHADWICK,	)	**04774/35386/63126**
Defendant.	)	

ORDER

AND NOW, this 22nd day of July 1994, upon consideration of Wife's Emergency Omnibus Petition For Special Relief, it is hereby ORDERED and DECREED that:

1. Within twenty-four (24) hours of the entry of this Order, H. Beatty Chadwick is directed to return the $2.5 million that he transferred out of the United States in February, 1993, to an account under the jurisdiction of this court, to be held in escrow by counsel for Barbara Jean Crowther Chadwick and counsel for H. Beatty Chadwick pending further Order of the Court.

2. Husband is enjoined from further assigning, concealing, secreting or dissipating marital assets;

3. The marital home located at 280 Roberts Road, Bryn Mawr, Pennsylvania, shall immediately be listed for sale by a court-appointed third party;

4. Husband is directed to pay, forthwith on account of Wife's counsel fees and costs the amount of $75,000.00;

5. Husband is directed to surrender his passport to this Court pending further Order of the Court;

6. Husband is enjoined from leaving the jurisdiction of this Commonwealth until further Order of Court.

7. This matter including a transcript of the testimony shall be referred to the Delaware County District Attorney's Office and to the U.S. Attorney for a consideration of possible or of criminal charges.

BY THE COURT:

/s/ Joseph Labrum
J.

APPENDIX G

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL ACTION – LAW

BARBARA CROWTHER CHADWICK,	)	
Plaintiff,	)	
	)	**No. 92-19535**
v.	)	
	)	**In Divorce**
H. BEATTY CHADWICK,	)	
Defendant.	)	

ORDER

Counsel for the parties were advised by this Court that a hearing would be held on Barbara Jean Crowther Chadwick's Petition for Contempt and for Writ of Ne Exeat or Writ of Capias Ad Satisfaciendum on Monday, October 31, 1994 at 10:00 A.M. Defendant, H. Beatty Chadwick was personally served with a subpoena directing his appearance at that hearing and his attorney was served with a Notice to Attend and to Produce directing H. Beatty Chadwick's appearance at that hearing. Defendant, H. Beatty Chadwick, was represented by David Auerbach at that hearing on October 31, 1994. Defendant, H. Beatty Chadwick, did not appear at the hearing on October 31, 1994.

Upon consideration of the Petition for Contempt and for Writ of Ne Exeat or Writ of Capias Ad Satisfaciendum, and after hearing thereon, it is hereby ORDERED and DECREED as follows:

1. H. Beatty Chadwick is held in Contempt of Court for willful violations of the Order of July 22, 1994. He is to be apprehended and incarcerated until a further hearing is held.

2. Because of defendant H. Beatty Chadwick's failure to appear at the scheduled October 31, 1994 hearing, notwithstanding valid service of a subpoena directing his appearance, this Court has issued a bench warrant for H. Beatty Chadwick's arrest. Said bench warrant shall not be rescinded without the approval of the undersigned judge. When apprehended, defendant, H. Beatty Chadwick, shall be incarcerated until a further hearing is held.

3. Defendant, H. Beatty Chadwick, is hereby enjoined from selling or in any way profiting from the release, publication, writing or other dissemination of the facts which are the subject of this litigation and any such rights or benefits are assigned to plaintiff, Barbara Jean Crowther Chadwick.

4. This matter is again referred to the Delaware County District Attorney's office and the United States Attorney's Office for possible prosecution of criminal charges against defendant, H. Beatty Chadwick.

5. Defendant, H. Beatty Chadwick, is again ordered to surrender his United States passport to this Court until further order. The State Department shall be notified of this Order and of the July 22, 1994 Order so that appropriate action may be taken, including the placing of a hold on H. Beatty Chadwick's United States passport. This Court has previously ordered that H. Beatty Chadwick shall not leave the Commonwealth of Pennsylvania, and shall not leave the United States.

6. This matter is referred to the Disciplinary Board of the Supreme Court of Pennsylvania for investigation of the ethical violations by H. Beatty Chadwick. This Court recommends to the Disciplinary Board that H. Beatty Chadwick's license to practice law be suspended as soon as possible.

DATED this 31st Day of October, 1994 at Media, Delaware County, Pennsylvania.

BY THE COURT

/s/ Joseph Labrum
Labrum, J.

11-2-94

APPENDIX H

Extract from Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 filed March 2, 2000 with the United States District Court for the Eastern District of Pennsylvania.

* * *

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

Ground One: Pursuant to Judge Shapiro's directive petitioner filed a "seventh state habeas petition" which presented his claim that his confinement for over 50 months was unconstitutional.

Ground Two: Denial of due process by imprisonment for noncompliance with an Order with which petitioner was unable to comply. Petitioner was imprisoned because he was unable to pay $2,500,000 into a court administered account as the Court of Common Pleas directed petitioner to do. The record is lacking in proof that petitioner has the present ability to comply, beyond a reasonable doubt, the legal standard. Instead, the State Court reached its conclusions improperly by mere disbelief of petitioner.

Ground Three: Denial of due process since petitioner was not afforded a jury trial and other procedural rights. Petitioner was not given the right to a jury trial on the critical issue of petitioner's ability to comply with the Court's Order. Instead, this issue was decided against petitioner by the same court which was imposing punishment. Moreover, the State court placed upon petitioner the burden of proving the inability to comply, thus denying petitioner the presumption of innocence.

Ground Four: Denial of due process by summary nature of proceedings which adjudicated petitioner's imprisonment. The proceedings were called by the State court sua sponte and petitioner did not have notice of their purpose or the relief sought. There were no pleadings, arguments, briefs, submission of findings or the usual parts of a court trial as required by law.

Ground Five: Denial of due process to imprison petitioner where the imprisonment has become punitive. The duration of imprisonment at over 58 months now clearly has caused it to cease to be coercive, if ever it could have been, and to become punitive. The term is longer than that served for serious felonies. Moreover, the State court has treated the imprisonment as punitive, setting bail on its own motion at $3 million and failing to set a condition for petitioner's release, as well as placing petitioner in restrictive confinement with those accused and convicted of felonies.

Ground Six: Denial of due process to imprison petitioner for the nonpayment of money. The imprisonment to which petitioner is subject is essentially to coerce the payment of money. Such a purpose is contrary to current notions of due process since other means to collect monies are available at law.

Ground Seven: Denial of due process to imprison petitioner indefinitely in a civil action. Due process considers depriving a person of liberty to be a deprivation of a fundamental right which is warranted only as punishment for a crime or compelling State purpose which has not been demonstrated. In our jurisprudence civil confinement has been limited to mentally ill persons who are a danger to themselves or others.

Ground Eight: Denial of due process since the order by which petitioner is imprisoned is unlawful on its face. The order fails to specify a condition upon the fulfillment of which petitioner's imprisonment will terminate. On the contrary, the Order requires petitioner to remain imprisoned "until a further hearing is held." This authorizes indefinite imprisonment at the sole discretion of the Court. Nearly five years later, the "further hearing" contemplated by the Order apparently has never been held.

Ground Nine: Denial of due process to imprison petitioner for alleged violation of an Order which the Court lacked jurisdiction to issue. The payment order, as to which petitioner was adjudicated in violation, was issued under the power in the state divorce code to grant "special relief" prior to a hearing on and Decree of Divorce. The unprecedented use of this power to augment marital assets is not authorized by state law which authorizes only injunctions *against* the transfer of assets.

Ground Ten: Denial of due process because petitioner was denied a prompt appeal. Petitioner filed a timely appeal of the State court Order which ordered him to pay the $2,500,000 and the State court Order which adjudicated him in contempt and directed his imprisonment. The appeals were quashed, however, because the orders were deemed interlocutory and not final.

* * *